SENATE.

WEDNESDAY, *July 7, 1909.*

The Senate met at 10 o'clock a. m.

Prayer by the Chaplain, Rev. Ulysses G. B. Pierce, D. D.

The Journal of yesterday's proceedings was read and approved.

FINDINGS OF THE COURT OF CLAIMS.

The VICE-PRESIDENT laid before the Senate a communication from the assistant clerk of the Court of Claims, transmitting a certified copy of the findings of fact filed by the court in the cause of Mrs. Maria M. Harris, Frank N. Harris, Henry W. Harris, George W. Harris, Alla V. Harris, Annie E. Harris, John W. Harris, William Harris, and Thomas B. Harris, heirs and representatives of Henry N. Harris, deceased, *v.* United States (S. Doc. No. 123), which, with the accompanying paper, was referred to the Committee on Claims and ordered to be printed.

PETITIONS AND MEMORIALS.

Mr. KEAN presented a petition of the Guarantee Building and Loan Association, of Camden, N. J., praying for the adoption of a certain amendment to the so-called "corporation-tax amendment" to the pending tariff bill exempting building and loan associations from the provisions contained therein, which was ordered to lie on the table.

He also presented memorials of sundry members of the composing room chapel of the Jersey City Herald, of Jersey City; of sundry members of the composing room chapel of the Evening News, of Newark; of sundry members of the stereotypers' chapel of the Observer, of Hudson County; of sundry employees of the John L. Compton chapel of the Printing Pressmen and Assistants' Union, No. 183, of Hudson County; and of sundry employees of the Public Printer chapel of the Printing Pressmen and Assistants' Union, No. 183, of Hudson County, all in the State of New Jersey, remonstrating against the adoption of the proposed duty on print paper and wood pulp in the pending tariff bill, which were ordered to lie on the table.

Mr. BURTON presented a petition of sundry employees of the Novelty Cutlery Company, of Canton, Ohio, praying for the adoption of the proposed Senate substitute for paragraph 151 in the pending tariff bill relative to the duty on imported knives and erasers, which was ordered to lie on the table.

THIRD COLORADO VOLUNTEER CAVALRY.

Mr. WARREN, from the Committee on Military Affairs, to whom was referred the joint resolution (S. J. R. 20) to restore the status of the Third Colorado Volunteer Cavalry, who served during the late civil war, asked to be discharged from its further consideration, and that it be referred to the Committee on Pensions, which was agreed to.

EMILY PERKINS HALE.

Mr. KEAN, from the Committee to Audit and Control the Contingent Expenses of the Senate, to whom was referred Senate resolution No. 66, submitted yesterday by Mr. LODGE, reported it without amendment, and it was considered by unanimous consent and agreed to, as follows:

Senate resolution 66.

Resolved, That the Secretary of the Senate be, and he is hereby, authorized and directed to pay to Emily Perkins Hale, widow of Rev. Edward Everett Hale, late Chaplain of the United States Senate, a sum equal to six months' salary at the rate he was receiving by law at the time of his demise, said sum to be considered as including funeral expenses and all other allowances.

BILLS INTRODUCED.

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. GALLINGER:

A bill (S. 2843) granting an increase of pension to Edward Baker (with accompanying papers);

A bill (S. 2844) granting an increase of pension to Charles A. Riddle (with accompanying papers); and

A bill (S. 2845) granting an increase of pension to James F. Marshall (with accompanying papers); to the Committee on Pensions.

By Mr. McCUMBER:

A bill (S. 2846) to prevent the sale of intoxicating liquors in buildings, ships, navy-yards, and parks and other premises owned or used by the United States Government; to the Committee on Education and Labor.

By Mr. BURTON:

A bill (S. 2847) for the relief of Emma Morris; to the Committee on Claims.

A bill (S. 2848) to remove the charge of desertion from the military record of John H. Lettrell; and

A bill (S. 2849) to correct the military record of Timothy Sullivan; to the Committee on Military Affairs.

A bill (S. 2850) granting a pension to Henry Roberts;

A bill (S. 2851) granting an increase of pension to John Welch;

A bill (S. 2852) granting an increase of pension to Jacob M. Zartman;

A bill (S. 2853) granting an increase of pension to William A. Sturgeon;

A bill (S. 2854) granting an increase of pension to Peter Spears;

A bill (S. 2855) granting a pension to Peter Lunsford;

A bill (S. 2856) granting an increase of pension to Abram McCoy;

A bill (S. 2857) granting an increase of pension to Anthony Barleon;

A bill (S. 2858) granting an increase of pension to William A. Brown;

A bill (S. 2859) granting an increase of pension to George Richards;

A bill (S. 2860) granting a pension to John Carnes;

A bill (S. 2861) granting an increase of pension to Robert M. Work; and

A bill (S. 2862) granting a pension to Phoebe E. Davis; to the Committee on Pensions.

By Mr. DU PONT (by request):

A bill (S. 2863) to provide for payment of the claims of certain religious orders of the Roman Catholic Church in the Philippine Islands; to the Committee on the Philippines.

By Mr. GUGGENHEIM:

A bill (S. 2864) granting an increase of pension to John Barthel (with accompanying paper); to the Committee on Pensions.

By Mr. OWEN:

A joint resolution (S. J. R. 41) proposing an amendment to the Constitution of the United States; to the Committee on Privileges and Elections.

WITHDRAWAL OF PAPERS—ROYE E. KNIGHT.

On motion of Mr. McCUMBER, it was

Ordered, That leave be granted to withdraw from the files of the Senate the papers in the case of Roye E. Knight (S. 3965, 60th Cong., 1st sess.), there having been no adverse report thereon.

THE TARIFF.

The VICE-PRESIDENT. The morning business is closed and the first bill on the calendar is in order.

The Senate resumed the consideration of the bill (H. R. 1438) to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes.

The VICE-PRESIDENT. The question is on concurring in the amendments made as in Committee of the Whole.

Mr. BACON. I do not know what the method of procedure will be——

Mr. ALDRICH. I ask that the amendments made as in the Committee of the Whole may be concurred in in gross with the exception of such as may be reserved by individual Senators; and I ask that the reservations may be made now.

Mr. BAILEY. I want to reserve——

The VICE-PRESIDENT. Is there objection to the request that the amendments made as in Committee of the Whole be concurred in except where Senators announce amendments which they desire to have considered separately? The Chair hears no objection.

Mr. BAILEY. I wish to reserve the amendment beginning with section 6, on page 371, known as the "corporation-tax amendment."

Mr. BACON. I understand that a reservation——

Mr. ALDRICH. Must be submitted to a separate vote.

Mr. BACON. Includes all there is as well as the particular amendment. It is not necessary to reserve each——

The VICE-PRESIDENT. Certainly not.

Mr. BAILEY. I reserve the whole amendment.

Mr. BACON. There is another point I desire to ask, if I may have the attention of the Senator from Rhode Island; I desire to know whether I am correct in this understanding. The adoption of the amendments en bloc will not prevent the adoption of other amendments which do not change those amendments?

Mr. ALDRICH. Oh, no; not at all.

Mr. BACON. In other words, the bill is open in the fullest extent to amendment.

Mr. ALDRICH. Undoubtedly.

Mr. BACON. Only after the adoption of those amendments they themselves can not be changed.

Mr. ALDRICH. Unquestionably the Senator is right.

Mr. BEVERIDGE. An amendment may be offered to any other part of the bill, I understand.

Mr. ALDRICH. Undoubtedly.

Mr. BACON. I understand that it can be offered to some part of the bill, if it does not change the amendment.

Mr. ALDRICH. That is right.

Mr. HEYBURN. I wish to make an inquiry. When these amendments are adopted together, they become a part of the bill in the Senate?

Mr. ALDRICH. That is right.

Mr. HEYBURN. Including those reserved——

Mr. ALDRICH. Not including those amendments—aside from those. The amendments are not open to a continuous order.

Mr. HEYBURN. I want to reserve for consideration the zinc schedule.

Mr. ALDRICH. That is all right. The Senator can do that.

The VICE-PRESIDENT. Will the Senator from Idaho state what paragraph he desires to have reserved?

Mr. HEYBURN. I desire to reserve paragraph 190.

The VICE-PRESIDENT. The Secretary will make a note of that reservation.

Mr. BEVERIDGE. I reserve paragraph 189. I will say in advance that I think the Senator from Massachusetts and I will probably agree upon the matter, but I reserve it so that it may be open.

Mr. STONE. I reserve paragraph 148½.

Mr. BEVERIDGE. I reserve tentatively paragraph 194—that is, if it does not appear that paragraph 124 is a committee amendment. I mean the drawback provision. I intend to offer an amendment to the drawback provision, and if there is not a committee amendment to the drawback provision I do not wish to be shut out.

The VICE-PRESIDENT. No amendment has been made to paragraph 124.

Mr. WARREN. I suggest that we have some information as to what the paragraphs are that are being reserved.

The VICE-PRESIDENT. The bill is before Senators on their desks, and they can readily follow it if they will be good enough so to do.

Mr. BROWN. I wish to reserve paragraph 425.

The VICE-PRESIDENT. The Senator from Nebraska reserves paragraph 425.

Mr. PENROSE. I wish to give notice of my intention to offer an amendment to paragraph 100 and paragraph 101. These are the same in the Senate bill as in the House bill, so I suppose it is unnecessary to make the reservation.

Mr. ALDRICH. It is not necessary to reserve those paragraphs.

Mr. PENROSE. I say I suppose it is not necessary, but it can do no harm.

The VICE-PRESIDENT. It can do no harm.

Mr. McLAURIN. I do not suppose it is necessary to reserve this point, but I wish to give notice that I will again introduce the amendment I proposed, to put farming implements, carpenters' tools, and blacksmiths' tools on the free list.

Mr. ALDRICH. That is not a reservation.

Mr. BURTON. I should like to ask what paragraph was reserved by the Senator from Pennsylvania [Mr. PENROSE]?

The VICE-PRESIDENT. He gave notice that he would offer an amendment to paragraphs 100 and 101. There was no amendment, and it was not necessary to reserve it.

Mr. BACON. I wish to give notice that I desire to reserve paragraph 123, on page 38, and also——

Mr. ALDRICH. There is no amendment to paragraph 123, as I recollect.

The VICE-PRESIDENT. There is no amendment to paragraph 123.

Mr. ALDRICH. It is not necessary to make that reservation.

Mr. BACON. I should like to give notice of it in order to avoid any possibility of question.

The VICE-PRESIDENT. No harm can be done.

Mr. BACON. I desire to give notice also on page 92, of paragraphs 280 and 281, and paragraph 284, on page 93. There are other amendments, which I think are covered by the notice given by the Senator from Texas.

I wish to give notice also for my colleague [Mr. CLAY], who is necessarily absent, as to two amendments. If he should not return in time, I will offer them for him. I do not know exactly at what point he would desire to introduce one of them. One of them, however, is paragraph 213. I do not know that that is an amendment either, but I give the notice.

The VICE-PRESIDENT. Paragraph 213 has not been amended.

Mr. BACON. His amendment is to strike out the paragraph and insert a substitute.

Mr. ALDRICH. That will be in order in any event.

Mr. BACON. I understand; but I desire to be absolutely safe about it.

There is another amendment which he would offer. The particular point is not designated. I think, however, it would be possibly an amendment to the corporation tax. It is an amendment taken, I think, practically from the Spanish-war law with reference to stock transactions and things of that kind. I can not more particularly designate it than that.

Mr. BANKHEAD. I desire to reserve paragraphs 368, 369, and 371.

The VICE-PRESIDENT. Very good.

Mr. BRISTOW. I wish to inquire what the effect would be if an amendment should be offered to the bill that would affect in any way an amendment already adopted. Suppose, in amending paragraph 213 it should have some influence on an amendment which was concurred in in this general concurrence, would that be out of order?

Mr. ALDRICH. I think it would, for the reason that the other paragraph would have to be modified. I think it will not be possible indirectly to amend an amendment already concurred in. That is my judgment.

Mr. JONES. I desire to have paragraph 171 reserved, and also paragraph 488.

Mr. NEWLANDS. I should like to reserve paragraph 471d.

Mr. GUGGENHEIM. I give notice that I wish to reserve paragraph 524, which is in the free list.

Mr. CLARK of Wyoming. Mr. President, I desire to make a parliamentary inquiry. In the case of a reservation by an individual Senator of a paragraph, does that leave the whole paragraph open to amendment by each Senator?

Mr. ALDRICH. Oh, no; it only opens the amendment which was made as in Committee of the Whole. It refers only to the amendment adopted in the Committee of the Whole and action upon it.

Mr. CLARK of Wyoming. Then the amendment would be subject to amendment?

Mr. ALDRICH. Undoubtedly.

The VICE-PRESIDENT. Oh, yes.

Mr. CUMMINS. I desire to reserve section 2. It relates to the maximum and minimum tariff. I also desire to reserve section 12. There seems to be no continuity in these sections.

Mr. ALDRICH. What is the substance of it?

Mr. CUMMINS. I reserve section 12, which relates to the Board of General Appraisers, that part of it especially which authorizes the appointment by the President of the board.

Mr. BAILEY. If the Senator from Iowa will excuse me, section 12 is the tonnage.

Mr. ALDRICH. It is subsection 12.

Mr. CUMMINS. It is subsection 12.

The VICE-PRESIDENT. On page 343.

Mr. ALDRICH. Subsection 12 of section 3.

Mr. CUMMINS. I also desire to reserve sections 29 and 30, which relate to the establishment of a customs court of appeals. I also reserve section 7.

The VICE-PRESIDENT. The clerks at the desk did not get what the Senator just said he desires to reserve.

Mr. CUMMINS. Subsections 29 and 30, which relate to the establishment of a customs court of appeals.

The VICE-PRESIDENT. On page 362.

Mr. CUMMINS. Also section 7. I think it properly should be section 7. It relates to countervailing duties on export duties and bounties offered by a foreign country.

While I am on my feet I desire to give notice of an amendment which I may as well offer now, so that it may be printed. It is an independent paragraph or section which I will call "section 6½." It proposes the levy of an income tax upon individual incomes, and is entirely independent of the corporation income tax which has already been adopted. I will ask that it be printed.

The VICE-PRESIDENT. Without objection, the amendment will be printed, and it will lie on the table until called up by the Senator from Iowa.

Mr. NEWLANDS. I should like to reserve the section which relates to the appointment of experts by the President.

Mr. ALDRICH. That has already been reserved.

Mr. NEWLANDS. What section is it?

Mr. ALDRICH. Section 2.

Mr. LORIMER. I should like to reserve paragraph 17 and paragraph 466.

The VICE-PRESIDENT. Paragraph 17 and paragraph 466 are reserved by the junior Senator from Illinois.

Mr. BRISTOW. I wish to reserve Schedule E. I do not want to take any chances.

Mr. ALDRICH. That is not necessary. There are no amendments to Schedule E, except as Senators may move amendments to it. Does the Senator desire to amend paragraph 217?

Mr. BRISTOW. Paragraph 213.

Mr. ALDRICH. That is entirely open in the Senate.

Mr. BRISTOW. And also Schedule M, because I want to offer an amendment to one of those paragraphs, and I think it affects a number of others.

Mr. ALDRICH. The Senator can not reserve amendments to a schedule. I suggest that he must indicate the particular amendment he desires to have reserved.

Mr. BRISTOW. I will read the paragraphs, then, in Schedule M. I thought I would save time by reserving the schedule.

Mr. ALDRICH. Will the Senator suggest the particular amendment he wants to have reserved?

Mr. BRISTOW. I want to amend——

Mr. ALDRICH. The particular paragraph?

Mr. BRISTOW. Paragraph 409.

The VICE-PRESIDENT. Paragraph 409 will, then, be reserved.

Mr. BRISTOW. And any other paragraphs that might affect it I want to reserve. For that reason, I suggested that the schedule should be reserved, because I do not want to be caught by being ruled out of order for lack of a reservation.

The VICE-PRESIDENT. The Chair thinks the Senator will have to name by number the paragraphs he desires to reserve.

Mr. BRISTOW. Paragraphs 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413——

The VICE-PRESIDENT. There is no amendment to paragraph 413.

Mr. BRISTOW. That is not amended. Then paragraphs 414 and 416.

The VICE-PRESIDENT. Very good.

Mr. DANIEL. I give notice that I may desire to offer an amendment to paragraph 17 and also paragraph 66.

Mr. ALDRICH. There will be no trouble about offering amendments afterwards. I ask that the amendments except those that have been reserved be now concurred in.

Mr. CLAPP. Before that is done others may wish to be heard. While no doubt a reservation by any Senator would reserve all amendments that he may wish reserved, still to protect myself against a possible temporary absence from the Senate when these matters come up, I want to reserve section 6, the so-called "corporation tax" provision. I intend to offer an amendment to it. I also reserve the provision relating to the establishment of a tariff commission.

The VICE-PRESIDENT. What is the number?

Mr. CLAPP. I can not state.

Mr. ALDRICH. It is section 2. Both those have been reserved by the Senator from Texas.

Mr. CLAPP. That may be, but there is so much confusion here I have waited until I could have the floor a moment for myself. I also wish to reserve the provisions relating to the establishment of a customs court.

Mr. ALDRICH. That has been reserved.

Mr. BRIGGS. I desire to have paragraph 1 and paragraph 183 reserved.

The VICE-PRESIDENT. Paragraphs 1 and 183 will be reserved.

Mr. GORE. The senior Senator from Wisconsin [Mr. LA FOLLETTE] desires to make certain reservations with reference to these schedules, or rather the paragraphs. I am not able to state in his absence the particular amendments he had in view. I wish to express the hope that no action will be taken in his absence which will prejudice or foreclose his right to offer the amendments.

Mr. HUGHES. I desire to reserve paragraph 471d and paragraph 309.

The VICE-PRESIDENT. The Senator from Colorado reserves paragraph 471d and paragraph 309.

Mr. BACON. I am not sure whether I designated paragraph 468 or not.

The VICE-PRESIDENT. The Senator did not before. Does he reserve paragraph 468?

Mr. BACON. I now designate it, though it may not be necessary. There is a proviso stricken out, and that might make it necessary to give the notice. So I do so.

Mr. BURTON. I desire to reserve paragraphs 83 and 88, and in connection therewith paragraph 493½; also paragraph 126, paragraph 182, and paragraph 627. I also reserve paragraph 90.

Mr. BACON. I gave notice, I think, of paragraph 123. I desire now to send to the desk the amendment which I intend to propose, in order that it may be printed.

The VICE-PRESIDENT. Without objection, the amendment will be printed and lie on the table.

Mr. BRIGGS. I desire to withdraw my request for reserving paragraphs 1 and 183.

Mr. BURTON. I have found another paragraph in connection with paragraph 88, paragraph 526.

The VICE-PRESIDENT. Paragraph 526 is reserved by the Senator from Ohio.

Mr. OLIVER. I wish to reserve paragraph 101.

Mr. ALDRICH. Paragraph 101 has already been reserved by two or three Senators. There is no amendment to it, but it has been reserved.

Mr. STONE. I stated a moment ago that I desire to reserve paragraphs 447½ and 448. I do not know whether the Secretary has it.

The VICE-PRESIDENT. The Secretary has it.

Mr. BULKELEY. I desire to reserve the paragraph relating to the corporation tax.

Mr. ALDRICH. That has been reserved by a number of Senators.

Mr. BULKELEY. Also paragraph 189, on page 68; section 6, on page 371; paragraph 177, on page 62; paragraph 433, on page 188; and paragraph 186, on page 66.

Mr. DICK. I desire to reserve paragraphs 22, 86, 271, 352, 419, 427, 455, and 587.

The VICE-PRESIDENT. Very good. Are there other reservations?

Mr. BRISTOW. If the amendment which I expect to offer to paragraph 213 is adopted, it would affect the duties on sugar.

Mr. ALDRICH. I will agree that if the Senator gets that amendment adopted I will be willing to take up the other provisions.

Mr. GALLINGER. All the rest of the bill?

Mr. ALDRICH. Yes.

Mr. BRISTOW. It might affect the paragraph relating to the Philippine sugar.

Mr. ALDRICH. If the Senator's amendment is adopted, I will agree to take up anything in the bill he desires.

Mr. BRISTOW. All right; I accept that. I am satisfied.

Mr. McLAURIN. I propose to offer an amendment to paragraph 708½. It might come in conflict with that paragraph if it were not reserved. Therefore I reserve paragraph 708½.

Mr. HALE. I ask that there be printed for the use of the Senate a list of the reserved amendments.

Mr. ALDRICH. Oh, no; do not let us do that. We will call them up in order. I do not want to have that done.

Mr. HALE. I will withdraw the request.

The VICE-PRESIDENT. Are there any other reservations? The question, then, is on concurring in the amendments not reserved.

Mr. TALIAFERRO. I ask that paragraph 408 be reserved.

The VICE-PRESIDENT. The Senator from Florida reserves paragraph 408.

Mr. ALDRICH. That has already been reserved twice, I will say to the Senator from Florida.

Mr. BRISTOW. I desire to reserve paragraph 94.

The VICE-PRESIDENT. The Senator from Kansas reserves paragraph 94. Are there other reservations?

Mr. DANIEL. The bill is so multiplex that anyone is liable to overlook something which he wishes to reserve. I think we had better leave the bill free to amendment.

Mr. ALDRICH. Oh, no; we can not do that. Regular order, Mr. President.

Mr. BACON. I desire to ask the Senator from Rhode Island a question. When the Senate bill is finished under his suggestion——

Mr. DANIEL. I am going to help to get the bill through as quickly as possible, but I do not think it right to close up the bill.

Mr. ALDRICH. The bill, I will say to the Senator from Virginia, is not closed up. Any Senator has a right to offer any amendment he sees fit after the committee amendments are disposed of.

The VICE-PRESIDENT. Does the Senator from Rhode Island yield to the Senator from Georgia?

Mr. ALDRICH. I do.

Mr. BACON. The Senator will recall the suggestion made by him and also by the Chair that particular paragraphs should be designated. I am not sufficiently familiar with the sugar schedule, but if amendments to be proposed by my colleague——

Mr. ALDRICH. The Senator from Kansas [Mr. BRISTOW] has practically covered what the Senator from Georgia desires.

Mr. GALLINGER. The entire paragraph.

Mr. CULBERSON. I will ask if the subject of drawbacks has been reserved by any Senator? My understanding is that there is nothing in the Senate bill——

Mr. ALDRICH. But there are several amendments with reference to drawbacks which have been offered. It is not necessary to reserve anything in reference to drawbacks. That will be open to amendment.

Mr. CULBERSON. Very well; with that understanding.

Mr. DANIEL. I should like to reserve any amendment or reserve the right to move to strike out any provision that concerns tobacco.

The VICE-PRESIDENT. The Chair did not understand the Senator from Virginia.

Mr. ALDRICH. The tobacco amendments have not been agreed to yet, and those will be in order when they come up.

Mr. DANIEL. But there are some already in the bill. I should like to reserve any amendment or the right to strike out any provision that concerns tobacco.

Mr. ALDRICH. That is not possible.

The VICE-PRESIDENT. The Chair thinks it is necessary to designate it by number, so that there may be no confusion. Will the Senator from Virginia be good enough to designate the numbers?

Mr. ALDRICH. I ask that a vote be taken on concurring in the amendments in gross.

Mr. NEWLANDS. What do I understand is now the question?

The VICE-PRESIDENT. It is on concurring in the amendments in gross, except those reserved.

Mr. NEWLANDS. Mr. President, after a special session of four months the tariff bill is now reported from the Committee of the Whole to the Senate, and within a few days will go into conference. No material changes can now be made in the bill, and the only question before us is whether we may not, by some general provisions, plant the seed of a rational tariff system, under which excessive tariff duties may be gradually reduced and the tariff taken out of politics.

The purpose of the session was to revise the tariff pursuant to the Republican platform—by the imposition of such duties as would equal the difference between the cost of production at home and abroad, together with a reasonable profit to American industries. The undertaking seemed simple. The Dingley schedules, elaborately worked out, covered every foreign product likely to seek entrance to our country in either the dutiable or the free list. No marked readjustment of schedules was necessary; the differential only need be ascertained, and approximate accuracy only was demanded.

METHOD OF CONGRESS UNSCIENTIFIC.

The method pursued by Congress was most unscientific. The Dingley Act contained 16 schedules, 471 paragraphs, and 4,000 items. It was necessary to ascertain the differential as to each item. No court would have attempted this task of ascertaining facts without calling in the aid of a master in chancery, who would hear the contentions and testimony of the importers on the one side and the domestic manufacturers on the other, and render findings of fact. A tariff commission would have been invaluable for this purpose; but Congress, jealous of its powers, concluded to conduct the investigation without outside aid.

The only semblance of investigation was made by the Ways and Means Committee of the House, whose hearings covered 16 volumes and 8,000 pages.

After the testimony was taken by this bipartisan committee, in which both parties were represented, the Democrats were excluded from the deliberations and the Republican members alone acted as a tariff commission and reported to the House their findings as to the differentials which are contained in the Payne bill. It is not pretended that these findings were even approximately accurate. They represented, not impartial determination of fact, but compromise and bargains. The bill was adopted in the House after eighteen days, and during that time nearly 400 judges were sitting upon the question of fact as to what the differential was. Then, under the rule, separate votes were taken on only 5 or 6 of the 4,000 items, and the bill was disposed of, the only alternative being the acceptance or rejection of the entire bill. Under the circumstances, no other course was feasible. It would be impossible to picture the confusion which would result from continuous debate and votes on each schedule, paragraph, and item, and the efforts of nearly 400 Members to reach a correct conclusion.

SENATE ACTION.

When the bill came to the Senate it was referred to the Finance Committee and reported two days afterwards, without hearings. The Republicans of the Finance Committee organized themselves into an unauthorized tariff commission, holding hearings in executive session and reporting amendments. Whilst the Senate is a smaller body than the House and unhampered in debate, it was clear that in order to bring the matter to a conclusion within a reasonable time it was necessary to have an organization that would back the Finance Committee in all its contentions, and to this end the party spirit was appealed to. The chairman of that committee at the very start assumed a bold and truculent manner, contemptuous of opposition and denunciatory of all suggestion of reduction by the progressive Members of his own party as involving an abandonment of party loyalty and treason to the protective principle.

At such a time the recommendation of the President of the United States, exercised in a constitutional way by message, would have been of immense importance, for doubtless the majority of the Republican Members would have preferred to follow the President, who was elected to lead, rather than the chairman of the Finance Committee, who was not elected to lead. But what could the President recommend? He had been in office but forty days; the information necessary to enable him to recommend specific reduction was not available, and no machinery had been provided by which he could ascertain the facts necessary to form a judgment as to desirable changes in tariff rates. Had such information for specific recommendation been available there is no doubt the President could have taken away from the chairman of the Finance Committee the majority of his organization, who, whilst unwilling to follow progressive associates declared by party leaders to be "insurgent," would have yielded readily to the suggestion of regularity involved in following the acknowledged leader of the party. This is evidenced by the fact that when the President acted decisively in favor of the substitution of a corporation tax for an income tax there was almost immediate acquiescence in his recommendation, although the tax itself, because of its universality and its inconvenience to the numerous small corporations throughout the country, aroused opposition in the constituency of every Senator. It is true that many voted for the President's measure in order to escape what they regarded as a greater evil—a general income tax; but, notwithstanding this, the incident clearly proves the effectiveness of a presidential recommendation at a critical time in influencing the action of his party.

SENATE REVISION UPWARD.

The Senate has now been in continuous session for ninety days over these tariff schedules; many able and brilliant discussions have taken place; but the legislation thus far shaped is almost barren of results in accomplishing what the President doubtless has in view—an honest revision of the tariff, following the rule laid down by the Republican platform. The revision of the Senate has doubtless been upward rather than downward, and the evils of excessive tariff duties have been increased rather than diminished.

It is true that some of these excesses may be corrected in conference, and it is confidently expected that the influence of the President will be exercised there; but unless the conference voluntarily places itself in communication with the President, it is difficult to see how he can exercise his power in any constitutional way; and, unless he has made a study of the schedules and is prepared to make specific recommendations, it is difficult to see what good can be accomplished by his intervention. If he is prepared to recommend specific reductions, the time to present them is by a message after the bill is reported by the Senate in Committee of the Whole to the Senate itself for final action.

Again, conference offers little chance of relief, for under the established rules of procedure the conferees can not fix a duty which is below the duty fixed by either House. As the Senate has made practically no reductions, all that conference could accomplish would be acquiescence in the moderate reductions of the Payne bill; so that conference presents the opportunity of little relief, and the only remaining expedient is a veto of the bill.

VETO ACTION.

And here another difficulty presents itself. The tariff bill is not a piece of original legislation, but a measure intended to correct the abuses of an existing law; and if, on the whole, after its passage, it is demonstrable that the revised duties are less onerous than the old ones, it will be difficult for the President to veto the bill on the ground that it does not go far enough, for in that case the old law would stand and none of the excessive duties would be corrected. It will be difficult, therefore, for the President to accomplish what he desires by a veto, unless he wishes to record his condemnation of party breach of faith, and the only alternative will be to accept the bill and press on later for ameliorative legislation. In doing this it will become necessary for him to make specific recom-

mendations, after the momentum of the reform movement has in a measure been lost, after Congress has acted, and when it will be very unwilling to return to the consideration of a subject which has been the source of so much bitterness and acrimony, with so little substantial result. A simple recommendation, under such circumstances, would probably fail; the President would have to make repeated recommendations, to organize public opinion, and to make a determined fight for a change in the organization of the Senate. Such a contest would probably absorb the best energies of the President during his entire term of office and prevent him from taking up effectually various other reforms relative to banking, transportation, and trusts and combinations, to which he doubtless desires to address himself later on; and even should he take this course, he will find himself opposed, as President Roosevelt was, by the Republican organization in the Senate, whose prestige would be increased by its success in the present issue.

EVOLUTION OF A SCIENTIFIC TARIFF.

It is not my province to proffer advice to the Republican party; but I am deeply solicitous that our action here, even though it may not meet the just expectations of the country, shall contain the seed of a rational tariff system which will gradually, by a process of evolution, eliminate the tariff from politics, just as the railroad question has been taken out of politics by the creation of the Interstate Commerce Commission. Stability of duties is as important to production as is stability of rates to interstate commerce; and reasonable duties are as essential to commerce as reasonable rates are to transportation. We can not expect to correct all the abuses of the tariff system in a day; we must, in shaping corrections of these abuses, recognize, for the present, at least, the protective system; but it should be remembered that the rule laid down by the Republican convention varies in only one particular, namely, the allowance of a profit to the manufacturer, from the declaration made by the Democratic party in its platform of 1888, which was as follows:

A fair and careful revision of our tax laws, with due allowance for the difference between the wages of American and foreign labor, must promote and encourage every branch of such industries and enterprises by giving them assurance of an extended market and steady and continuous operations.

I feel assured that if the Republican rule were fairly applied it would result in a considerable reduction of duties and that much relief would come to the country from it; and I feel also assured that if the American people were satisfied that a fair effort was being made to comply with this rule, through some competent tribunal organized by Congress, tariff agitation would practically end. The feeling now is that the rule is not being fairly applied; that the facts have not been ascertained; and it seems to me that patriotic men on both sides of this Chamber might well unite in such action as will result in a fair application of this rule.

If we could put into this bill an amendment providing the machinery by which the President could ascertain the differential called for by the Republican platform, authorizing him upon ascertaining it to reduce the duties in excess of it to such standard, we would accomplish more than has been accomplished in all the four months of deliberation. Or, if we could secure an amendment providing that wherever the imports of any commodity are less than one-tenth of its total production in this country, the President is authorized to gradually reduce the duty on such commodity until the imports equal one-tenth of the production, we would abolish prohibitory duties and accomplish more good than by all our contentions. And if we could organize a bipartisan tariff commission with power to ascertain and find as a fact the differential in the cost of production at home and abroad, and could also authorize the President upon the approval of such finding to make reductions of the duty to such differential, either immediately or gradually, by a percentage extended over a series of years, we would accomplish much toward the scientific adjustment of the tariff and its elimination from partisan politics.

I do not minimize the fact that the tariff bill contains some provisions which will be beneficial. Among these are the provisions for the tax on corporations and for the employment of—

such persons as may be required to make thorough investigations and examinations into the production, commerce, and trade of the United States and foreign countries, and all conditions affecting the same.

Whilst I would have preferred that the tax should be imposed only upon the larger industrial corporations, presenting, as they do, a vast aggregation of wealth which practically escapes taxation and which is enjoying the benefits of subsidized production, and which presents in the main the abuses which it is desirable to correct; and whilst I believe that unnecessary risk has been taken in incurring constitutional objections as to the right of Congress to levy a tax upon the occupations of artificial persons only, and not including natural persons, and to impose a tax upon corporate franchises granted by a sovereign State, yet I believe that this act, if held constitutional, will be of much benefit in securing the statistical information that will enable Congress to act intelligently upon the subjects of tariff legislation and trust regulation.

As to the tariff experts whose employment by the President is authorized, I regret that the bill does not explicitly organize a bipartisan tariff commission, to be appointed by the President, with power to ascertain the differential called for by the Republican platform, and with power to the President to reduce the duties fixed by this act to such differential. Efforts have been made to improve this provision in this particular, but without avail. The best that can be hoped for is that the President will appoint a capable body of experts, and that by a process of evolution it will gradually become a tariff commission with full power to act under a rule laid down by Congress.

THE PHILIPPINES.

There is another matter regarding which I am solicitous. I have contended against the abolition of duties on Filipino sugar, tobacco, and other products, upon the ground that the effect would be to give the Philippine Islands artificial prosperity by giving them the subsidized prices for their products now prevailing in this country through the imposition of high tariff duties, and that this will effectually build up subsidized interests in those islands that will use their fatal influence against independence and autonomy. The President's recommendation, however, made with the best of motives and out of solicitude for the welfare of the Filipino people, has carried, and all that can be done is to ameliorate its effects as much as possible.

There can be no doubt that our policy toward those islands, if we propose to hold them for all time as subject territory of the United States, and our policy if, on the other hand, we contemplate ultimately a limited autonomy under our protection, as suggested by the Senator from New York, should be quite different. There is an unwillingness on the part of the dominant party to fix a time within which autonomy is to be recognized, and I would not now press action in that direction; but I would suggest that by a solemn legislative utterance we put into law the recent declaration of the Senator from New York upon this floor, that we do not contemplate incorporating those islands as a part of the United States or holding perpetual dominion over them; that we hold them in trust for their own people, and purpose at the appropriate time in the future, to be determined by us, to give them autonomy, as in the case of Cuba; and that our purpose is to so shape the government of those islands as to prepare the Filipinos for self-government and ultimately to yield the islands to the government of their own people. If in connection with this, whilst remitting the entire duty upon Filipino products, so far as the United States is concerned, we would provide that one-fourth or one-half of it should go to the Filipino government for expenditure in agricultural development, in manual training, and in the acquisition of a common language, we would do much to fit those people for ultimate freedom. The difficulty about the proposed relief is that we practically remit these duties to the Filipino planters, who will make a struggle to absorb the whole and will yield but little to Filipino labor. It is much better now to segregate a portion of this, say one-half, amounting to seven or eight million dollars, or one-fourth, amounting to $3,500,000 annually, and turn it over to the Filipino government for the purposes which I have indicated. This is what we did with reference to Porto Rico; we took all the duties collected on Porto Rican products and turned them into the Porto Rico treasury for internal development. If we can apply this policy to a portion of the duties upon Filipino products, we will extend a real benefaction to the Filipino people, and not an exclusive benefaction to the Filipino planters.

In pressing these considerations I have had no partisan purpose, and I see no reason why Democrats and Republicans alike should not join in legislative action that will crystallize them into law.

Mr. ALDRICH. Regular order, Mr. President.

The VICE-PRESIDENT. The question is on concurring in the amendments made as in Committee of the Whole en bloc, except such as have been reserved.

Mr. LA FOLLETTE. Mr. President, I wish to make some reservations. It was my misfortune not to get my copy of the bill in time to go through it and make reservations by the numbers of the paragraphs, as I should like to do; and in order to protect myself, it may be necessary for me to number every paragraph in this bill from beginning to end. I do not want to do that; I am not here to obstruct the passage of this bill, but I desire that certain amendments shall be reserved. I have

not had the opportunity to make a list of those paragraphs, so that I can reserve them by number.

I want to say, Mr. President, with respect to the unanimous consent, which it is asserted by some Senators has been entered into, that these amendments may be submitted en bloc, excepting such amendments as Senators reserve, that there is not a general understanding on this floor that such unanimous consent has been given.

The VICE-PRESIDENT. The reporter's notes for the RECORD will show what was done.

Mr. LA FOLLETTE. I understand that, Mr. President, and I have no doubt that the RECORD will show that such unanimous consent was submitted by the Chair and that no objection was taken by any Senator here; but it was done, I am certain, very rapidly and consummated in such a way that many Senators on this floor did not understand it.

Mr. President, I am not standing here with any disposition to unduly hinder this bill in its progress before the Senate; but I do want certain reservations made. I have not had the opportunity under the new reprint of the bill to search out the numbers of such paragraphs. So I may be constrained, in order to protect my rights upon this floor, to begin at the beginning of this bill and number the paragraphs. I do not want to do that, Mr. President. If I can have some understanding, or if some understanding can be had with the Senate generally, that paragraphs may be taken up without going through the formula of moving to reconsider, then I shall be very glad to have it done in that way.

Mr. ALDRICH. Mr. President, the statement of the Senator from Wisconsin [Mr. LA FOLLETTE] that he did not see the bill until this morning might perhaps throw some blame upon the officers of the Senate with reference to the distribution of copies of the reprinted bill. I will say to the Senator from Wisconsin that two copies of the bill as amended were delivered to his secretary yesterday afternoon between 4 and 5 o'clock. If they did not reach the Senator from Wisconsin, it was not the fault of the officers of the Senate.

Mr. LA FOLLETTE. I will say to the Senator from Rhode Island that the bill was delivered at my house last night in the mail at a late hour and laid aside. I got no opportunity to examine the bill until this morning.

Mr. ALDRICH. The copies were delivered to the Senator's secretary yesterday afternoon, but I do not know, of course, whether they reached him or not.

Mr. LA FOLLETTE. I do not know about that.

Mr. ALDRICH. Mr. President, the unanimous consent to which the Senator from Wisconsin refers was not agreed to hastily. I made the suggestion yesterday afternoon, and I repeated it on several occasions this morning, and, as the RECORD will show, the unanimous consent was agreed to. If the Senator from Wisconsin has any special paragraphs which he desires to have reserved, I have no objection, within reasonable limits, of submitting to his suggestion in reference to this matter; but the Senator must understand that we have got to finish this business at some time or other, that there has got to be an end to the discussion, and that there has got to be a vote.

Mr. LA FOLLETTE. I do not need to have that said to me, Mr. President. I understand that as well as does the Senator from Rhode Island.

Mr. ALDRICH. After this motion has been agreed to and the paragraphs which have been reserved are concurred in, I will say to the Senator from Wisconsin, that if he has any other paragraph, there will be no trouble about arranging to have it voted upon again if he so desires. I have no intention of cutting him or anybody else off.

Mr. LA FOLLETTE. The point is, have I any assurance that some other Senator will not object to a reconsideration?

Mr. ALDRICH. I do not think that any Senator will object. If I, representing the committee, shall request that it shall be done, I do not think any other Senator, within any reasonable limit, would object. I feel very certain of that. The Senator from Wisconsin is quite well aware that after all these amendments are concurred in the whole bill will be open to amendment in the Senate. I suppose the Senator understands that.

Mr. LA FOLLETTE. I understand exactly that the whole bill is not open to amendment. I understand that after these amendments are concurred in no amendment can be adopted which in any way changes the amendments which have been concurred in. Is not that the fact?

Mr. ALDRICH. That is correct.

Mr. LA FOLLETTE. Except on reconsideration. Therefore they are not all open to change.

The VICE-PRESIDENT. All of the remainder of the bill will be open to amendment.

Mr. LA FOLLETTE. I understand; but those changes which have been made on the motion of Senators who have been objecting to increases in this bill, and the amendments which have been made in the Senate to which they most object, Mr. President——

Mr. ALDRICH. I can only assure the Senator that if he has any special paragraph or any special amendment that he desires to have a vote on, which has not already been put on in the Senate, so far as I am concerned, I will cooperate with him to secure a vote.

Mr. LA FOLLETTE. I should like to inquire of the Senator from Rhode Island if he means that I can amend the amended paragraphs?

Mr. ALDRICH. That is what I mean. I will try——

Mr. LA FOLLETTE. That is, any paragraph of the bill—not only those that have been changed and have been agreed upon, but all the paragraphs or any of the paragraphs?

Mr. ALDRICH. If the Senator——

Mr. LA FOLLETTE. I want to say to the Senator from Rhode Island that I am not seeking to get any consent from him that will embarrass the progress of this bill any further than to have the opportunity to discuss, within very reasonable limits, any of the paragraphs, and to have a vote upon any paragraph. That is all.

Mr. ALDRICH. I have no objection to an understanding that the Senator from Wisconsin, if any of these paragraphs have not already been reserved which he desires especially to have an additional vote upon, shall have that right, so far as I am concerned.

Mr. LA FOLLETTE. If there can be unanimous consent to that arrangement, that is all I ask.

Mr. ALDRICH. There could be no unanimous consent, because it is not necessary, and we could not make that unanimous consent; but I will agree——

Mr. LA FOLLETTE. I think we can make a unanimous-consent agreement for that as well as——

Mr. ALDRICH. It would be a precedent that I should not want to see established.

Mr. KEAN. Let us have the regular order.

The VICE-PRESIDENT. We are having the regular order. The Senator from Wisconsin is the regular order.

Mr. BEVERIDGE. Mr. President——

The VICE-PRESIDENT. The Senator from Wisconsin has the floor. Does he yield to the Senator from Indiana?

Mr. LA FOLLETTE. I do.

Mr. BEVERIDGE. I suggest to the Senator from Wisconsin, concerning, as he has himself stated, all the portions of this bill that are not amended in Committee of the Whole, he would have the right, without anybody giving any consent, to move to amend them; but as to the others, I think the Senator from Wisconsin will see, on reflection, that the assurance of the Senator from Rhode Island [Mr. ALDRICH] that he will cooperate with the Senator from Wisconsin in having any amendment that he might want to offer to amendments of the Committee of the Whole considered and voted upon, would be effective for this reason——

Mr. LA FOLLETTE. I am very certain that so far as the Senator from Rhode Island is concerned it would be effective. I do not know, however, but that some other Senator might object.

Mr. BEVERIDGE. I was going to say to the Senator that, as a practical matter, I think, no Senator will object; but any Senator who would object would do so for the purpose of hastening this bill to a conclusion. That is clearly so. Now, it is apparent to everyone, and always has been here in the Senate, that under a situation like that, if there should be objection to any such reasonable request, it would produce a state of mind in the Senate and among Senators which would prolong discussion, instead of shortening it. The whole question could come up again upon the motion of the Senator from Wisconsin and be considered, and that would arouse greater debate than ever. For that reason, I think, the situation handles itself; and upon the assurance of the Senator from Rhode Island, I think that, just as a matter of saving time, if nothing else, there would be no objection, because the Senator could not be prevented from moving a reconsideration, and a state of irritation would be created by such an objection that the very object a Senator might have in view by such an objection would be defeated by his making it. That is the reason, I think, there will be no trouble.

Mr. LA FOLLETTE. The Senator from Indiana must know that, with respect to certain situations here, there is a chronic state of unrest and irritation. Even since this matter has been under discussion, to see if it could not be disposed of here in a few moments by a tacit agreement, there has been a demand for the regular order.

Mr. BEVERIDGE. That was withdrawn.

Mr. LA FOLLETTE. No; it was not withdrawn. The Chair disposed of it because the Chair determined we were proceeding in regular order. I had risen to reserve some paragraphs here.

Coming up on the car this morning I marked a few paragraphs that I will reserve to "make assurance double sure," and then I shall be very glad to have that understanding with the chairman of the committee.

Mr. ALDRICH. I think that I have given the Senator from Wisconsin assurance upon the point that I will cooperate with him——

Mr. LA FOLLETTE. Very well; I will act upon that, Mr. President, and assume that I will have the opportunity desired.

The VICE-PRESIDENT. The question is on concurring in gross in the amendments made as in Committee of the Whole that have not been reserved.

The amendments not reserved were concurred in.

Mr. ALDRICH. Now I ask that the reserved amendments be taken up in their order.

The VICE-PRESIDENT. Without objection, that course will be followed. The Secretary will state the first amendment reserved.

The SECRETARY. Paragraph 17.

Mr. LORIMER. I ask that paragraph 17 be passed over until paragraph 466 is disposed of. I have also asked that paragraph 466 be reserved.

The VICE-PRESIDENT. Without objection, that course will be followed.

Mr. NELSON. What paragraph was that?

The VICE-PRESIDENT. Paragraph 17 is passed over until paragraph 466 has been disposed of.

The SECRETARY. The next reserved amendments in order are in paragraph 22, on page 9, gelatin, reserved by Mr. DICK.

Mr. ALDRICH. I ask that the amendments be concurred in.

The VICE-PRESIDENT. The question is on concurring in the amendments in paragraph 22.

The amendments were concurred in.

The SECRETARY. The next reserved amendments are in paragraph 83, at the top of page 20, tiles, and so forth, reserved by Mr. BURTON.

Mr. ALDRICH. I ask that the amendments be concurred in.

Mr. BURTON. Mr. President, I have no objection to that agreement being made. There is some difference between the House and the Senate. I think in some particulars the House provision is better, and in others the Senate provision is better. I am willing to leave that to be disposed of in conference.

The VICE-PRESIDENT. The question is on concurring in the amendments.

The amendments were concurred in.

The SECRETARY. The next amendments reserved are in paragraph 86, on page 20, reserved by Mr. DICK.

Mr. ALDRICH. I ask that the amendments be concurred in.

The VICE-PRESIDENT. The question is on concurring in the amendments.

The amendments were concurred in.

The SECRETARY. The next amendments reserved are in paragraph 88, on page 21.

Mr. MONEY. Mr. President, it is impossible for me to know what is going on when we are passing amendments by paragraphs. I do not want to delay the bill long enough to have them all read, but I should like to have some sort of information as to what they are.

The VICE-PRESIDENT. The Chair will direct the Secretary from now on to announce what the paragraph is when the number is announced.

Mr. MONEY. I do not care to have them all read, but I merely want to know what they are about.

The VICE-PRESIDENT. The Chair understands the desire is to have such a statement for general information on the subject.

Mr. ALDRICH. Mr. President, I hope there will be no general debate on the paragraphs unless they are paragraphs of importance. If there is any attempt to prolong discussion, I shall feel it to be my duty on unimportant paragraphs to move to lay amendments upon the table. The paragraphs have been largely discussed, and unless there are some special reasons for reopening the discussion, I hope that Senators will refrain from debating the paragraphs over again. This particular paragraph, for instance, has been debated and debated. I ask with confidence that the committee amendments be concurred in.

Mr. DICK. Mr. President, I asked that paragraph 86 might be reserved, and before I got a chance to offer an amendment the motion was agreed to concurring in the amendments as reported by the committee. I do not care to debate the proposition. I only want to state that gypsum rock, under the law as it exists, now bears a duty of 50 cents per ton; the House bill reduced it to 40 cents per ton; and the Senate bill reduced it to 20 cents per ton. My amendment would restore the House provision of 40 cents per ton.

Mr. ALDRICH. I hope the amendment will not be agreed to, Mr. President.

The VICE-PRESIDENT. The committee amendments in paragraph 86 have already been concurred in, and the paragraph has been disposed of.

Mr. ALDRICH. It has been disposed of. Then I object to its reconsideration. There has got to be an end of this business at some time. I strenuously object to its being reconsidered, and I should object as strenuously to the increase of duty which the Senator from Ohio proposes.

Mr. DICK. But, Mr. President——

Mr. ALDRICH. I ask that paragraph 88 may be considered.

The VICE-PRESIDENT. The Senator from Ohio desires to discuss paragraph 86.

Mr. DICK. I do not care to discuss it. I only want to correct the statement of the chairman of the committee, who says that he opposes an increase of duty. My amendment does not propose an increase of duty. The duty in the existing law is 50 cents per ton, and the amendment would make it 40 cents per ton, which is the rate carried in the House bill, and is still a decrease of 10 cents per ton from existing law.

Mr. ALDRICH. But, Mr. President, it stands in this bill at 20 cents a ton. The Senator from Ohio proposes to double the duty as it now stands in the bill, and I am opposed to any changes in that direction. I say that to the Senator from Ohio in the best of feeling. It is not possible for the Senate, in my judgment, to commence now and increase all these duties to meet the views of individual Senators. If we are going to do that, we might as well abandon the bill.

Mr. DICK. Mr. President, it is not the purpose, I take it, of Senators who offer amendments here to hope thereby to have the bill abandoned, nor to ask that an amendment should be adopted upon the individual opinion of a Senator. If the amendments do not receive a majority vote, they will not be adopted. It is only asking for fair and timely consideration that these amendments are now suggested. We were assured all during the consideration of the bill as in Committee of the Whole that ample opportunity should be given for the consideration of amendments; and, while I am anxious that this bill should be expedited to its conclusion, it is not my purpose as a Senator to permit any industry to be sacrificed for the sake of expedition.

Mr. President, I move a reconsideration of the vote by which the amendments to paragraph 86 were adopted.

The VICE-PRESIDENT. The Senator from Ohio moves to reconsider the vote by which the amendments to paragraph 86 were concurred in.

The motion was rejected.

The SECRETARY. The next amendment reserved is in paragraph 88, page 21, "Clays or earths, unwrought or unmanufactured," reserved by Mr. BURTON.

Mr. BURTON. Mr. President, I reserved the right to offer an amendment to that paragraph—in fact, two amendments. I wish to propose an amendment striking out, at the top of page 22, both the House provision and the Senate substitute for it.

Mr. ALDRICH. I suggest to the Senator from Ohio that the first thing in order is to dispose of the committee amendments, and then——

Mr. BURTON. I do not understand the Senator.

Mr. ALDRICH. To first dispose of the amendments made as in Committee of the Whole. The question is on the Senate concurring in the amendments to this paragraph made as in Committee of the Whole. Then the matter will be open in the Senate for amendment as to the text of the bill as it came from the House.

Mr. BURTON. I ask unanimous consent, then, with a view to moving a reconsideration, that the amendments made as in Committee of the Whole be concurred in.

Mr. ALDRICH. The Senator from Ohio can move to amend the amendment made as in Committee of the Whole, but I understood him——

The VICE-PRESIDENT. That is what the Senator is now desiring to do.

Mr. BURTON. I desire to strike out the matter I have referred to, and leave crude asphalt on the free list.

Mr. ALDRICH. It would not be on the free list, I suggest to the Senator, by disagreeing to the committee amendment.

Mr. BURTON. Of course that amendment would be followed by another one. I have also introduced an amendment inserting crude asphalt on the free list.

The VICE-PRESIDENT. The Secretary will state the amendment suggested by the Senator from Ohio.

The SECRETARY. Disagree to the committee amendment at the top of page 22, whereby the words "fifteen one-hundredths of 1 cent per pound on the bitumen content contained therein" were stricken out, and the words "crude, if not dried, or otherwise advanced in any manner, $1.50 per ton; if dried or otherwise advanced in any manner, $3 per ton," were inserted in lieu thereof.

Mr. BURTON. If that is the shortest way to reach what is desired, I make that motion, and on it I ask for the yeas and nays.

Mr. BEVERIDGE. May I suggest something to the Senator from Ohio, with his permission? It is this: The intention of his amendment is to put this material on the free list?

Mr. BURTON. Yes.

Mr. BEVERIDGE. Very well. After the amendments made as in Committee of the Whole have been disposed of, the bill will still be in the Senate, open to amendment; and the Senator can offer an amendment adding an additional paragraph to the free list, and putting this material on the free list directly. Is not that correct?

Mr. ALDRICH. Undoubtedly.

Mr. BURTON. I take it this language has to be stricken out.

Mr. ALDRICH. No.

Mr. BURTON. In order to make progress, I asked unanimous consent that the Senate amendment might be concurred in. I do not understand that the Chair presented that request to the Senate.

The VICE-PRESIDENT. The Chair understood the Senator from Ohio to afterwards modify that request by a motion.

Mr. BURTON. The motion was made in pursuance of the statement made at the desk, which I understood was the way selected in which the desired result might be reached.

The VICE-PRESIDENT. The Chair will put whatever question the Senator desires put. The Chair understood——

Mr. ALDRICH. I ask that the question be put as now stated by the Senator.

The VICE-PRESIDENT. The Senator from Ohio now demands the yeas and nays, or does the Senator desire to withdraw that demand and ask for unanimous consent?

Mr. BURTON. I ask for unanimous consent.

The VICE-PRESIDENT. The Senator, then, withdraws his request for the yeas and nays.

Mr. ALDRICH. What is the request?

The VICE-PRESIDENT. That the committee amendment be nonconcurred in.

Mr. ALDRICH. I object to that.

Mr. BURTON. No; my request is that it be concurred in.

Mr. ALDRICH. Oh, that the committee amendment may be concurred in?

The VICE-PRESIDENT. Is there objection to the request? The Chair hears none. The committee amendment is concurred in. The question, then, is on the other amendments to the paragraph.

Mr. BURTON. I move to strike out the provision as it now stands and insert in that connection a paragraph, which I think should be numbered 493½, placing crude asphaltum on the free list.

Mr. BAILEY. Why crude asphaltum alone? Why not asphaltum in all forms?

Mr. BURTON. I will state to the Senator from Texas, that should this amendment prevail it is my intention, then, to introduce another amendment lowering the duty on refined asphalt.

Mr. BAILEY. But why should a man who refines the material have any duty on his product, when the man from whom he buys it in its crude state is given no duty? If the Senator wants to put it all on the free list, I shall join him. But I shall not vote to give the men who manufacture it their material free of duty, and still leave them a duty on their finished product.

Mr. ALDRICH. I suggest that the Senator can not at this stage make a motion to put this material on the free list.

Mr. BEVERIDGE. No; not now. He can do so after a while.

Mr. ALDRICH. He can do so later on.

Mr. BAILEY. He can move to strike it out here, which he has done.

Mr. BURTON. I move to strike out the provision, if such a motion is in order.

Mr. BAILEY. If the Senator will say that he will follow that with a motion to put on the free list crude asphaltum and asphaltum in all forms, I shall vote for it. Otherwise, I shall not.

Mr. BURTON. I will state that I shall introduce an amendment proposing a material reduction. It seems to me it is fair that there should be some duty for the benefit of those who manufacture the refined product. The process involves labor and considerable expense.

Mr. BAILEY. But, Mr. President, the men who manufacture it expend no more labor in proportion to the value of the product than the men who produce the crude commodity. If you look at the question merely as one affecting the people who produce the raw material and the people who finish the product, as between them the same rate of duty is just and fair. But if you look at it from the standpoint of the Government, the Government can and ought to get quite as much out of the raw material in proportion as out of the finished product.

Mr. BURTON. The Senator from Texas must recognize that, as in the case of the wool schedule, the cotton schedule, and every other schedule, there is a larger degree of labor and expense put on the manufactured article than on the raw material.

Mr. BAILEY. Not a particle, Mr. President. Value for value, there is not one cent more labor put on the manufactured article. It takes more human labor to produce raw cotton than it does to fabricate it. Fabricated cotton is generally, upon an average, worth two or three times what raw cotton is; and yet, day for day, hour for hour, man for man, and hand for hand, it requires more labor in proportion to the value to produce the raw cotton than it does to produce the manufactured article.

Mr. BURTON. I suggest that it is pretty late in the consideration of this bill and also very late in the tariff policy of this country to raise that argument.

Mr. ALDRICH. Whenever the Senator has concluded——

Mr. BURTON. I move to strike out the paragraph. It seems to me that is the proper motion.

Mr. ALDRICH. I move to lay the motion on the table.

The VICE-PRESIDENT. It seems to the Chair that the motion to strike out is not in order. The Senate has just voted, by unanimous consent, to concur in the amendment. Now a proposition is made to strike it out.

Mr. GALLINGER. I was about to raise that very point. It seems to me we ought to proceed in order. The rules of the Senate are plain. The Senate concurred, by vote, in this amendment.

The VICE-PRESIDENT. Certainly; by unanimous consent.

Mr. GALLINGER. And I do not see that any motion at all pertaining to it is in order.

The VICE-PRESIDENT. Except a motion to reconsider.

Mr. GALLINGER. That is all.

Mr. BURTON. Then I move to reconsider.

Mr. ALDRICH. And I move to lay that motion on the table.

Mr. BURTON. On that I demand the yeas and nays.

The yeas and nays were not ordered.

The motion to lay the amendment on the table was agreed to.

Mr. GALLINGER. I call for the regular order.

Mr. BURTON. I will state that there is also pending a motion, in the form of a paragraph numbered 493½, to place this material on the free list.

Mr. ALDRICH. Yes.

Mr. BURTON. I should like to make a parliamentary inquiry. Can I not bring that motion up now?

Mr. BEVERIDGE. Not now.

The VICE-PRESIDENT. When it is reached; certainly.

Mr. BEVERIDGE. That is what I tried to suggest to the Senator. His rights in this behalf are not lost, because after the whole of the amendments made as in Committee of the Whole have been concurred in, the bill is still in the Senate and open to amendment, and the Senator, as I understand—and that is agreed to by older Senators on my right—can offer the amendment as a new paragraph of the free list. That will accomplish everything the Senator desires.

Mr. BURTON. I had understood, Mr. President, in view of the reservation, that the right existed to move to strike out this paragraph, including the House provision, and that the proper way was to strike out both provisions. I understood the Chair, however, to rule against me upon that question.

The VICE-PRESIDENT. The Chair attempted to straighten out the Senator before he made his motion to concur in the committee amendment. Having concurred in the committee amendment, the Senate can not immediately proceed to strike it out, having but a moment ago voted it in.

The question is on concurring in the other amendments to the paragraph.

The amendments made as in Committee of the Whole were concurred in.

Mr. BURTON. Mr. President, there is one other amendment I should like to propose in the case of paragraph 526. Should that come up at this time, or in connection with the free list?

The VICE-PRESIDENT. In the regular course that has been agreed upon.

The SECRETARY. The next paragraph reserved is paragraph 90, on page 23, "Earthenware and china. Common yellow, brown, or gray earthenware."

Mr. ALDRICH. I ask that the committee amendments be concurred in.

Mr. BURTON. I desire to offer an amendment there. Where the words "common yellow" occur, I move to insert the word "grade" before the word "yellow."

Mr. ALDRICH. I object to that, Mr. President. It would entirely change the nature of the paragraph.

The VICE-PRESIDENT. The Secretary will report the amendment proposed by the Senator from Ohio.

The SECRETARY. On page 23, line 1, after the word "common," insert the word "grade."

Mr. BURTON. I suggest that that designates a class, while the other is a mere word of description.

Mr. ALDRICH. Yes; but it increases the duty, too. It about doubles the duty.

The VICE-PRESIDENT. The question is on agreeing to the amendment offered by the Senator from Ohio.

The amendment was rejected.

The amendment made as in Committee of the Whole was concurred in.

The SECRETARY. The next paragraph reserved is paragraph 94, on page 24, "Gas retorts."

Mr. ALDRICH. I ask that the committee amendments be concurred in.

The amendments made as in Committee of the Whole were concurred in.

The SECRETARY. The next paragraph reserved is 126.

Mr. BACON. Mr. President, we have passed over paragraph 123.

Mr. ALDRICH. I will say to the Senator that there was no amendment to paragraph 123.

The VICE-PRESIDENT. That may be amended later.

Mr. BACON. Then those paragraphs to which there are no amendments are to be postponed until the others have been disposed of?

Mr. ALDRICH. Until after the amendments made as in Committee of the Whole are disposed of.

The VICE-PRESIDENT. That is correct.

Mr. OVERMAN. I notice that in the case of paragraph 100 there is no committee amendment; but after the committee amendments are disposed of we can go back to it?

The VICE-PRESIDENT. Most certainly.

Mr. GALLINGER. The Chair has just said so.

The SECRETARY. The next paragraph reserved is paragraph 126, on page 39, "All iron or steel sheets or plates." There is one committee amendment in line 12, which strikes out "forty-five" and inserts "forty."

The VICE-PRESIDENT. The question is on concurring in the committee amendment.

Mr. BURTON. I desire to introduce another amendment as soon as that is disposed of.

The amendment made as in Committee of the Whole was concurred in.

Mr. BURTON. I wish to offer an amendment in line 7.

Mr. ALDRICH. That amendment is not now in order.

Mr. BURTON. I move to strike out "two-tenths" and insert "four-tenths."

The VICE-PRESIDENT. That will be in order after the amendments made as in Committee of the Whole are disposed of. The Secretary will report the next paragraph reserved.

The SECRETARY. Paragraph 171, on page 60.

Mr. JONES. I desire to offer an amendment to the paragraph.

Mr. ALDRICH. I ask that the committee amendments may be concurred in.

The VICE-PRESIDENT. The Senator from Washington offers an amendment, which the Secretary will state.

The SECRETARY. In paragraph 171, line 18, after the word "contained," insert a semicolon in place of the colon, and the words:

Ores containing arsenic, 1⅛ cents per pound on the arsenic contained therein; white arsenic or arsenious acid, 2 cents per pound.

Mr. ALDRICH. I hope the amendment will not be agreed to. It is not pertinent to this paragraph, in any event.

Mr. JONES. I desire to state to the chairman of the Finance Committee that I submitted this proposition to one of the experts of the Finance Committee, and asked him to frame an amendment covering what we desired and put it where it ought to be in the bill. This is where he placed it. I must say that I myself do not know so very much about the procedure in such cases, but this is the point where he thought it was proper to put in this amendment.

Mr. ALDRICH. It ought to be put in as a new paragraph, 171½, if it is going in at all. It ought not to be inserted in the midst of the antimony paragraph.

Mr. JONES. That is where the committee's expert put it. I do not know just where it should come.

Mr. ALDRICH. The expert was mistaken.

Mr. DIXON addressed the Chair.

Mr. JONES. I wish to present some of my reasons for offering the amendment.

The VICE-PRESIDENT. Does the Senator from Washington yield to the Senator from Montana?

Mr. JONES. Certainly.

Mr. DIXON. I hope the Senator from Washington will offer that as a separate paragraph. I do not think the two amendments ought to be incorporated in the same paragraph. I suggest that he offer it as paragraph 171½.

Mr. JONES. I am perfectly willing to do that, if that is satisfactory to the chairman of the committee and he thinks that is the way it ought to be done.

Mr. ALDRICH. Yes; it should come after the committee amendments. That is the place for it. It ought to be a separate paragraph.

Mr. JONES. All right; I take the judgment of the chairman of the committee in preference to that of his expert.

Mr. ALDRICH. I ask that the amendment to paragraph 171 be concurred in.

The VICE-PRESIDENT. Does the Senator from Washington withdraw his amendment?

Mr. JONES. Yes; I withdraw it.

Mr. ALDRICH. The Senator can offer it later.

The VICE-PRESIDENT. The question is on concurring in the amendment to paragraph 171.

The amendment made as in Committee of the Whole was concurred in.

Mr. JONES. Now, Mr. President——

Mr. ALDRICH. The Senator from Washington can offer his amendment after the committee amendments have been disposed of.

Mr. JONES. Very well.

The SECRETARY. The next paragraph reserved is 177, on page 62, "Tinsel wire, lame or lahn," and so forth.

Mr. ALDRICH. I ask that the committee amendments may be concurred in.

The amendments made as in Committee of the Whole were concurred in.

The SECRETARY. The next paragraph reserved is paragraph 182, on page 64, "Chrome or chromium metal," and so forth. That was reserved by Mr. BURTON.

Mr. BURTON. Mr. President, the duties proposed by the Senate on chrome or chromium, ferrochrome, and so forth, mean very substantial increases over the House provision, and very much more substantial increases as compared with the existing law. Under a decision of the courts rendered in 1905, ferrotungsten, ferrotitanium, and so forth, are made dutiable under what is called the "similitude clause" at the rate of $4 a ton. Some of these metals, notably ferrotungsten, are of very considerable value. According to the Treasury statistics, ferrotungsten imports have been valued at more than a thousand dollars a ton. Under this provision the duty on a ton of ferrotungsten valued at $1,000 would be $200. The duty is 25 per cent if it is valued at less than $200 per ton, and 20 per cent if valued at more than $200 per ton.

These metals are beginning to be used extensively in the making of tools and for a great variety of purposes. Some of them give greater tensile strength; some give greater hardness; and all of them are very useful.

I submit that the duties should not be increased; and I trust the House provision will prevail rather than the Senate provision. Indeed, I think there should be no duty at all.

Mr. ALDRICH. I ask that the committee amendment be concurred in.

The amendment made as in Committee of the Whole was concurred in.

The SECRETARY. The next paragraph reserved is paragraph 186, page 66: "Pins with solid heads, without ornamentation," and so forth.

The VICE-PRESIDENT. The question is on concurring in the amendments.

The amendments made as in Committee of the Whole were concurred in.

The SECRETARY. The next paragraph reserved is 189, on page 67, "Watch movements."

Mr. LODGE. Mr. President, to meet some of the objections which have been made to the marking provision, I offer the following amendment:

In line 6, page 69, after the word "dials," insert "whether attached to movements or not;" and, beginning on line 7 with the words "and, if," strike out from there down to and including the word "thereon," in line 10, including the comma after "thereon."

The VICE-PRESIDENT. The Senator from Massachusetts offers the amendment which the Secretary will state.

The SECRETARY. On page 69, in the committee amendment, on line 6, after the word "dials," insert a comma and the words "whether attached to movements or not" and a comma; and in lines 7, 8, 9, and 10 strike out the words "and, if attached to movements, in addition to the country of origin shall have the name of the maker or makers of such watch or clock movements indelibly painted or printed thereon" and the comma.

Mr. SCOTT. I will ask whether that is a committee amendment?

Mr. LODGE. Yes; that is an amendment proposed by the committee. It simplifies the marking.

The VICE-PRESIDENT. The question is on agreeing to the amendment offered by the Senator from Massachusetts [Mr. LODGE].

The amendment was agreed to.

Mr. BULKELEY. I desire to offer an amendment to the amendment, which I send to the desk.

The VICE-PRESIDENT. The Senator from Connecticut offers an amendment to the amendment, which the Secretary will report.

Mr. LODGE. What is the amendment?

The VICE-PRESIDENT. The Secretary is about to report it.

The SECRETARY. On page 69, paragraph 189, line 5, before the word "three," the first word in the line, insert:

Costing not more than 10 cents each, 1½ cents per dial and 40 per cent ad valorem; costing more than 10 cents each,

Mr. BULKELEY. I desire to say, in connection with the proposed amendment——

Mr. ALDRICH. I will accept that, if we can thereby avoid discussion.

Mr. LODGE. I accept the amendment.

The VICE-PRESIDENT. The question is on agreeing to the amendment of the Senator from Massachusetts to the amendment made as in Committee of the Whole.

The amendment to the amendment was agreed to.

The amendment made as in Committee of the Whole as amended was concurred in.

Mr. HEYBURN. I will withdraw my notice in regard to paragraphs 190 and 191, and trust to adjusting the matter in conference.

Mr. ALDRICH. The Senate conferees will certainly take up this matter and consider it very carefully.

The VICE-PRESIDENT. The question is on concurring in the amendments made as in Committee of the Whole to paragraphs 190 and 191.

The amendments were concurred in.

The SECRETARY. Paragraph 194, page 73, cash registers, and so forth.

Mr. BEVERIDGE. That will be brought up hereafter, because it is not a committee amendment.

Mr. ALDRICH. I ask that the committee amendment may be concurred in. It does not cover this.

Mr. BEVERIDGE. It does not cover it, and the amendment may be concurred in.

Mr. PILES. I offer an amendment to paragraph 194.

The SECRETARY. It is proposed to add at the end of the paragraph the following:

Provided further, That tar and oil-spreading machines used in the construction and maintenance of roads and in improving them by the use of road preservatives shall be admitted free of duty.

Mr. ALDRICH. I have no objection to that going in. We will look at it afterwards.

The amendment to the amendment was agreed to.

The amendment as amended was concurred in.

The SECRETARY. The next paragraph reserved is 217, on page 80, wrapper tobacco and filler tobacco, when mixed or packed, and so forth.

Mr. ALDRICH. I ask that the committee amendment may be concurred in.

Mr. SIMMONS. Mr. President——

Mr. ALDRICH. That does not cover the general tobacco question.

Mr. SIMMONS. I beg pardon.

The amendment was concurred in.

The SECRETARY. Paragraph 271, page 91, figs.

Mr. DICK. I find that the amendment which I proposed to offer is not to a committee amendment, and therefore will offer it later.

Mr. ALDRICH. I ask that the amendment made as in Committee of the Whole may be concurred in.

The amendment was concurred in.

The SECRETARY. Paragraph 281, page 92, fresh beef, veal, mutton, and so forth.

Mr. BACON. That has not been amended.

The VICE-PRESIDENT. Paragraph 281 has been amended, but not paragraph 280.

Mr. ALDRICH. Paragraph 281 was amended.

The amendment was concurred in.

The SECRETARY. Paragraph 309, page 102, all mineral waters and all imitations of natural mineral waters, and so forth.

Mr. ALDRICH. I ask that the amendment may be concurred in.

The amendment was concurred in.

The SECRETARY. Paragraph 352 is the next paragraph reserved. It was amended.

Mr. SCOTT. What page is it?

The VICE-PRESIDENT. Page 133.

Mr. DICK. I offer the amendment I send to the desk.

The SECRETARY. On page 134, paragraph 352, line 5, in the committee amendment, strike out the word "plain," so that it will read:

Woven fabrics.

The "woven" to begin with a capital.

Mr. ALDRICH. I hope the amendment will not be agreed to.

The amendment was rejected.

The amendment made as in Committee of the Whole was concurred in.

The SECRETARY. Paragraph 368, page 139, top waste, slubbing waste, roving waste, and so forth.

Mr. ALDRICH. I ask that the amendment may be concurred in.

Mr. CARTER. I should like later in the day to submit some remarks on this subject, and I ask that the paragraph be passed over for the time being.

The VICE-PRESIDENT. What was the request of the Senator from Montana?

Mr. ALDRICH. That it be passed over.

The VICE-PRESIDENT. Is there objection to the request of the Senator from Montana? The Chair hears none.

The SECRETARY. Paragraph 369, page 139, shoddy.

Mr. ALDRICH. I ask that the amendment be concurred in.

The amendment was concurred in.

The SECRETARY. Paragraph 371, on the same page, tops shall be subject to the same duty, and so forth.

Mr. ALDRICH. I ask that the amendment may be concurred in.

The amendment was concurred in.

The SECRETARY. Paragraph 402, page 166, pulp papers and books.

Mr. ALDRICH. I ask that the amendment may be concurred in.

The amendment was concurred in.

The SECRETARY. Paragraph 405, printing paper.

Mr. BROWN. In line 15, I move that the words "one-tenth" be inserted in place of "two-tenths."

Mr. ALDRICH. That question can be tested on the vote to concur in the committee amendment.

Mr. BROWN. All right.

The VICE-PRESIDENT. The question is on concurring in the committee amendments.

The amendments were concurred in.

The SECRETARY. Paragraph 406, page 170, papers commonly known as "copying paper."

The amendments were concurred in.

The SECRETARY. Paragraph 407, papers with coated surface or surfaces.

The amendment was concurred in.

The SECRETARY. Paragraph 408, pictures, post cards, calendars, and so forth.

Mr. TALIAFERRO. I offer the amendment I send to the desk.

The SECRETARY. On page 175, line 12, after the word "bands," insert "labels and flaps."

Mr. ALDRICH. I hope the amendment will not be agreed to.

Mr. TALIAFERRO. Mr. President, I wish to say a word about the amendment. Its purpose is to restore, as to flaps and bands used for cigars, the rates prescribed in existing law. They have been increased here, and I have letters and telegrams from independent manufacturers stating that there is really no competition on these articles between the importers and the domestic producers.

The imported articles already sell for a higher price than the domestic producers charge for their product, and the character of flaps, bands, and so forth, that are imported are, as a rule, not manufactured in this country. So, there is no question of competition at all, and the purpose of the amendment is to restore the lower rate of duty prescribed by the Dingley law.

Mr. SMOOT. Mr. President——

The VICE-PRESIDENT. Does the Senator from Florida yield to the Senator from Utah?

Mr. TALIAFERRO. Certainly.

Mr. SMOOT. As I caught the figures, I believe they are even lower than the House provided, and in one or two cases even lower than the present law.

Mr. TALIAFERRO. Mr. President, I shall not delay the vote. I have made the statement of the purpose of the amendments. The amendments reduce the rates upon these flaps and bands, while the committee's report increased the rates as provided in the Dingley law, and also in many instances increased the rates of the bill as it came from the House.

I ask that these amendments may be adopted and thereby restore to the bill the lower rates that are now provided in existing law.

Mr. ALDRICH. I will say to the Senator from Florida that he is mistaken, but I do not desire now to take the time of the Senate. I ask that the vote may be taken.

The VICE-PRESIDENT. The question is on agreeing to the amendment proposed by the Senator from Florida.

The amendment was rejected.

The VICE-PRESIDENT. The Senator from Florida offers other amendments, which will be stated in their order.

The SECRETARY. On page 175, line 13, strike out "thirty" and insert "twenty."

The amendment was rejected.

The SECRETARY. In line 19, strike out "fifty-five," before the word "cents," and insert "fifty."

The amendment was rejected.

The SECRETARY. In line 19, after the words "per pound" and the semicolon, insert "cigar labels, flaps, and bands printed in bronze only, 15 cents per pound."

The amendment was rejected.

The VICE-PRESIDENT. The question is on concurring in the amendment made as in Committee of the Whole.

The amendment was concurred in.

The VICE-PRESIDENT. The next reserved amendment will be stated.

The SECRETARY. Paragraph 409, writing, letter, note, handmade paper, and so forth.

The VICE-PRESIDENT. The question is on concurring in the amendment made as in Committee of the Whole.

Mr. BRISTOW. I desire to offer the following amendment, which I hope the chairman of the committee will accept, because I do not think he can have any serious objection to it. In line 7, page 178, I move to strike out the words "per ream" and to insert in lieu thereof the words:

But not exceeding 15 pounds per ream, 2 cents per pound, and 10 per cent ad valorem; weighing more than 15 pounds per ream.

That simply restores the Dingley rate on common writing paper.

The VICE-PRESIDENT. The question is on agreeing to the amendment proposed by the Senator from Kansas.

Mr. ALDRICH. This matter was fully discussed when the bill was in Committee of the Whole, and I certainly can not accept the suggestion of the Senator from Kansas. I hope the amendment will be voted down.

Mr. BRISTOW. I beg to inform the Senator from Rhode Island that it was not fully discussed.

Mr. ALDRICH. Perhaps not fully. Probably I had better withdraw the word "fully." It was considerably discussed.

Mr. BRISTOW. The Senator is mistaken if he thinks it was, because it was not.

The VICE-PRESIDENT. The Secretary will state the amendment proposed by the Senator from Kansas.

The SECRETARY. On page 178, paragraph 409, line 7, strike out the words "per ream" and insert:

But not exceeding 15 pounds per ream, 2 cents per pound and 10 per cent ad valorem; weighing more than 15 pounds per ream.

Mr. BRISTOW. Mr. President, when this was before the Committee of the Whole the statement was made by the Senator from Rhode Island that the changes made in the phraseology of this paragraph were simply for the purpose of classifying it and that there were no material advances in the rates. I should like the chairman of the committee to hear this because I think he will agree with me. He will remember that he stated when the amendment was before the Committee of the Whole that the changes made in this paragraph were for the purpose of reclassifying it. I have left the classification just as the committee made it. The only difference made by this reclassification is to include a number of kinds of paper in the committee amendment that were not included in the House provision and are not included in the present law.

But in the reclassification made by the committee those papers that come in under the present law at 2 cents per pound and 10 per cent ad valorem are included in the class that come in at 3 cents a pound and 15 per cent ad valorem, thereby increasing the duties on all of these papers from 2 cents a pound to 3 cents a pound specific and from 10 per cent ad valorem to 15 per cent ad valorem.

The amendment I offer simply restores the papers that come in under the Dingley Act at 2 cents a pound and 10 per cent ad valorem to that rate and leaves the other papers that come in at a higher rate under the Dingley Act at the same rate that was fixed by the Senate committee.

I made the objection then that the duty on a large amount of paper that is used as stationery by the average citizen in carrying on his business correspondence has been increased 1 cent a pound and 10 per cent ad valorem, and that is the fact. I inquired why it was necessary to increase the rate practically 60 per cent on the stationery that is used in transacting the great mass of the business of the country. There is no importation of any consequence. The papers are made in this country, and the only purpose that can be alleged is to give to the manufacturers of these papers an opportunity to increase the price, because they have no competition from abroad now.

I want to inquire if the Senate believes that it is necessary to increase the rate of duty on this common paper, when there is no foreign competition and the importations amount to very little. I want a vote upon the question. I do not believe the Senate will want to do that if it will consider for a moment. I know it is difficult at this late day to get any deliberation or careful consideration of any suggested changes. I hoped the Senator from Rhode Island might accept this amendment. I know how difficult it is to get any exception made to these rates that does not meet his approval, whether the request appeals to reason or not.

I ask that the duties on writing paper remain as they are—that they be not increased—and if there is any reason for increasing them, I should like to hear it.

Mr. ALDRICH. I desire to repeat the statement made by the committee when the bill was in Committee of the Whole, that the rates upon 90 per cent of writing and other paper used by the people of the United States are reduced one-half cent a pound by the committee, and that the only change made is the one-tenth for purposes of classification necessary to be made.

I hope the amendment of the Senator from Kansas will be voted down.

Mr. BRISTOW. I should like it if the Senator would state what that class of paper to which he refers consists of.

Mr. ALDRICH. It is impossible at this time for me to consent to go over a discussion which proceeded at some length in the Senate, and the facts in regard to which I suppose the Senator from Kansas and myself would never be able to agree upon.

Mr. BRISTOW. I will read the class of papers upon which the duty has been increased and then let the Senate judge whether they constitute only 10 per cent of the paper that is used in correspondence.

The Dingley law, paragraph 401 of the present law, reads as follows:

Writing, letter, note, handmade, drawing, ledger, bond, record, tablet, and typewriter paper, weighing not less than 10 pounds and not more than 15 pounds to the ream, 2 cents per pound and 10 per cent ad valorem.

Those papers are included in the following language in the present bill:

Writing, letter, note, handmade paper, and paper commercially known as handmade paper and machine handmade paper.

Now, here is the addition:

Japan paper and imitation Japan paper, by whatever name known—

These are the same—

bond, record, tablet, typewriter, manifold.

Typewriter and manifold are included in this; they were not in the other.

Onionskin and imitation onionskin papers, calendered or uncalendered.

Those are the papers that are now included, and the duty is increased from 2 cents a pound to 3 cents a pound.

I want to state that the papers described in that paragraph will, in my judgment, constitute 90 per cent of the paper that is used in the commercial correspondence of the country, and the duty has been increased from 50 to 60 per cent on this 90 per cent. The Senator from Rhode Island is mistaken in his judgment as to the amount of paper upon which the rate has been increased.

I ask for the yeas and nays on the amendment.

The VICE-PRESIDENT. The Senator from Kansas demands the yeas and nays on agreeing to the amendment submitted by him.

The yeas and nays were ordered.

Mr. BEVERIDGE. Let the amendment be read.

Mr. McLAURIN. I should like to have the amendment read.

The VICE-PRESIDENT. The Secretary will again read the amendment.

The SECRETARY. In paragraph 409, page 178, line 7, strike out the words "per ream" and insert—

But not exceeding 15 pounds per ream, 2 cents per pound and 10 per cent ad valorem; weighing more than 15 pounds per ream.

Mr. BRISTOW. I wish to state that this restores the Dingley rate.

The VICE-PRESIDENT. The Secretary will call the roll.

The Secretary proceeded to call the roll.

Mr. DILLINGHAM (when his name was called). Owing to the absence of the senior Senator from South Carolina [Mr. TILLMAN], with whom I have a general pair, I withhold my vote.

Mr. FRYE (when his name was called). I am paired with the senior Senator from Virginia [Mr. DANIEL].

Mr. GUGGENHEIM (when his name was called). I have a general pair with the senior Senator from Kentucky [Mr. PAYNTER], and I withhold my vote.

Mr. LODGE (when his name was called). I have a general pair with the Senator from Georgia [Mr. CLAY]. I transfer that pair to the junior Senator from Kentucky [Mr. BRADLEY] and vote "nay."

Mr. McCUMBER (when his name was called). I have a general pair with the junior Senator from Louisiana [Mr. FOSTER]. As he is absent, I withhold my vote.

Mr. RAYNER (when his name was called). I am paired with the junior Senator from New York [Mr. ROOT]. If he were present, I should vote "yea."

Mr. DEPEW (when Mr. ROOT's name was called). My colleague [Mr. ROOT] is necessarily absent, delivering one of the addresses at the Tercentenary on Lake Champlain. He is paired, as stated, with the Senator from Maryland [Mr. RAYNER].

The roll call was concluded.

Mr. CURTIS. I am requested to announce the pair of the junior Senator from Arkansas [Mr. DAVIS] with the senior Senator from Illinois [Mr. CULLOM].

Mr. CULBERSON. The Senator from Arkansas [Mr. DAVIS] is paired with the Senator from Illinois [Mr. CULLOM]. If the Senator from Arkansas were present, he would vote "yea."

The result was announced—yeas 34, nays 40, as follows:

YEAS—34.

Bacon	Chamberlain	Hughes	Owen
Bailey	Clapp	Johnston, Ala.	Shively
Bankhead	Crawford	La Follette	Simmons
Beveridge	Culberson	McLaurin	Smith, S. C.
Borah	Cummins	Martin	Stone
Bristow	Fletcher	Money	Taliaferro
Brown	Frazier	Nelson	Taylor
Burkett	Gamble	Newlands	
Burton	Gore	Overman	

NAYS—40.

Aldrich	Bulkeley	Clark, Wyo.	Dick
Bourne	Burnham	Crane	Dixon
Brandegee	Burrows	Curtis	Dolliver
Briggs	Carter	Depew	du Pont
Elkins	Jones	Page	Smoot
Flint	Kean	Penrose	Stephenson
Gallinger	Lodge	Perkins	Sutherland
Hale	Lorimer	Piles	Warner
Heyburn	Nixon	Scott	Warren
Johnson, N. Dak.	Oliver	Smith, Mich.	Wetmore

NOT VOTING—18.

Bradley	Davis	McCumber	Root
Clarke, Ark.	Dillingham	McEnery	Smith, Md.
Clay	Foster	Paynter	Tillman
Cullom	Frye	Rayner	
Daniel	Guggenheim	Richardson	

So Mr. BRISTOW's amendment was rejected.

The VICE-PRESIDENT. The question is on concurring in the amendment made as in Committee of the Whole.

The amendment was concurred in.

The SECRETARY. The next amendment reserved is in paragraph 410, on page 178, "Paper envelopes not specially provided for in this section," and so forth.

The amendment was concurred in.

The SECRETARY. The next reserved amendment is in paragraph 411, "Jacquard designs on ruled paper," and so forth.

The amendment was concurred in.

The SECRETARY. The next amendment reserved is in paragraph 412, page 179, "Books of all kinds, bound or unbound," and so forth.

The amendment was concurred in.

The SECRETARY. The next amendment reserved is in paragraph 414, "All boxes made of paper," and so forth.

The amendment was concurred in.

The SECRETARY. The next amendment reserved is in paragraph 416, "Manufactures of paper, or of which paper is the component material of chief value," and so forth.

The amendment was concurred in.

The SECRETARY. The next amendment reserved is in paragraph 427, page 186, "Dolls, and parts of dolls, doll heads," and so forth.

The VICE-PRESIDENT. The question is on concurring in the amendment made as in Committee of the Whole.

Mr. DICK. I offer the amendment which I send to the desk.

The VICE-PRESIDENT. The Senator from Ohio offers an amendment, which the Secretary will read.

The SECRETARY. In paragraph 427, on page 186, line 23, after the word "marbles," insert the words "not exceeding 1 inch in diameter," so that it shall read:

Toy marbles, not exceeding 1 inch in diameter, of whatever materials composed.

The VICE-PRESIDENT. The question is on agreeing to the amendment offered by the Senator from Ohio.

The amendment was rejected.

The VICE-PRESIDENT. The question is on concurring in the amendment made as in Committee of the Whole.

The amendment was concurred in.

The SECRETARY. The next reserved amendment is, in paragraph 433, page 188, "percussion caps, cartridges," and so forth.

The VICE-PRESIDENT. The question is on concurring in the amendment made as in Committee of the Whole.

The amendment was concurred in.

The SECRETARY. The next reserved amendment is, in paragraph 447½, page 195, "hides of cattle, raw or uncured," and so forth.

Mr. STONE. Mr. President, I desire to make an inquiry of the Chair. What I wish to do, or attempt to do, is to offer an amendment putting hides, leather, boots, and shoes upon the free list. If that should be done, it would, of course, necessitate the striking out of paragraph 447½ and some of the clauses in paragraph 448. I wish to inquire if this amendment is concurred in now and I withhold my amendment until we reach the free list and I offered it then as an amendment, what would be the parliamentary status with reference to this paragraph?

The VICE-PRESIDENT. It would be necessary to reconsider the vote by which this amendment had been concurred in.

Mr. STONE. That would have to be done if the other should be adopted?

The VICE-PRESIDENT. Certainly.

Mr. STONE. I will wait until we reach the free list.

Mr. McLAURIN. Mr. President, I renew the amendment that I offered heretofore. I move to amend the paragraph by adding at its conclusion the words:

The word "hides" in this paragraph shall be understood to include all skins of all sizes and weights.

The VICE-PRESIDENT. The question is on agreeing to the amendment offered by the Senator from Mississippi.

The amendment was rejected.

The VICE-PRESIDENT. The question is on concurring in the amendment made as in Committee of the Whole.

The amendment was concurred in.

The SECRETARY. The next reserved amendment is, in paragraph 448, "band, bend, or belting leather," and so forth.

Mr. ALDRICH. The committee desire to modify the amendment in line 21 by striking out "ten" and inserting "fifteen."

The SECRETARY. In paragraph 448, page 195, line 21, in lieu of the committee amendment striking out "five" and inserting "ten," it is proposed to strike out "five" and insert "fifteen."

The amendment was agreed to.

The VICE-PRESIDENT. The question is on concurring in the amendment as amended.

The amendment as amended was concurred in.

The SECRETARY. The next reserved amendment is, in paragraph 455, page 201, "manufactures of bone, chip, grass, horn, quills, india rubber," and so forth.

Mr. ALDRICH. I ask that the amendment made as in Committee of the Whole be concurred in.

The amendment was concurred in.

The SECRETARY. The next reserved amendment is, in paragraph 466, at the bottom of page 203, "Photographic dry plates or films," and so forth.

Mr. LORIMER. I offer an amendment and ask for its adoption.

The VICE-PRESIDENT. The Secretary will read the amendment.

The SECRETARY. Paragraph 466, line 22, page 203, after the word "exposed," strike out the words "not otherwise specially provided for in this section" and insert "or photographic film negatives, imported in any form for use in any way in connection with moving-picture exhibits or for making or reproducing pictures for such exhibits."

Mr. ALDRICH. I suggest to the Senator from Illinois that the committee amendment had better be disagreed to, which would strike out the words "including moving-picture films not developed or exposed," and then leave the remaining part as it stands, and add at the end of the paragraph the language which he now suggests.

Mr. LORIMER. That is entirely satisfactory.

Mr. ALDRICH. I ask that the committee amendment be disagreed to.

The VICE-PRESIDENT. The Senator from Illinois withdraws his amendment. The question is on concurring in the amendment of the committee.

The amendment was nonconcurred in.

The VICE-PRESIDENT. The Senator from Illinois offers an amendment which the Secretary will state.

The SECRETARY. Add at the end of the paragraph the following:

Photographic film negatives, imported in any form for use in any way in connection with moving-picture exhibits or for making or reproducing pictures for such exhibits.

And also the following——

Mr. ALDRICH. One and one-half cents a foot?

Mr. LORIMER. Twenty-five per cent ad valorem.

Mr. ALDRICH. What is the other amendment? The Senator has another amendment?

The VICE-PRESIDENT. The additional amendment proposed by the Senator from Illinois [Mr. LORIMER] will be stated.

The SECRETARY. It is also proposed to add the following:

Photographic film negatives, imported in any form, for use in any way in connection with moving-picture exhibits or for making or reproducing pictures for such exhibits, 25 per cent ad valorem. Photographic film positives, imported in any form, for use in any way in connection with moving-picture exhibits, including herein all moving, motion, moto-photography or cinematography picture films, prints, positives, or duplicates of every kind and nature, and of whatever substance made, 1½ cents per lineal or running foot.

The VICE-PRESIDENT. The question is on agreeing to the amendment.

Mr. BACON. I will inquire of the Senator from Rhode Island if that is an increase?

Mr. ALDRICH. It is the substitution of a specific duty for an ad valorem duty. It is extremely difficult to fix an ad valorem duty in this case which is satisfactory, for the reason that these films are imported as old films which have been used or injured, when in fact they are new. It is almost impossible to fix any value upon them for an ad valorem rate.

Mr. BACON. I suppose the Senator has a general idea, though, as to whether the equivalent duty is an increase?

Mr. ALDRICH. It is about the same. I think the Senator from Illinois [Mr. LORIMER] stated to the committee that the rates were about the same, only that they were made specific.

Mr. LORIMER. Yes.

The VICE-PRESIDENT. The question is on agreeing to the amendment.

The amendment was agreed to.

The amendments to the paragraph were concurred in.

Mr. LODGE. Mr. President, it will now be necessary to return to paragraph 17, which was passed over on this account.

The VICE-PRESIDENT. Without objection, the Senate will now return to paragraph 17.

Mr. LODGE. That was reserved by the Senator from Illinois, and passed over. The Senator has an amendment to offer to that paragraph which is necessary to make it correspond.

Mr. LORIMER. I wish to offer the amendment which I send to the desk.

The VICE-PRESIDENT. The amendment proposed by the Senator from Illinois to paragraph 17 will be stated.

The SECRETARY. Paragraph 17, page 7, line 4, after the word "known," it is proposed to insert "except moving-picture films."

The VICE-PRESIDENT. The question is on agreeing to the amendment.

Mr. DANIEL. Mr. President, I wish to state that I had in view an amendment to this same paragraph, but the one which has just been offered by the Senator from Illinois [Mr. LORIMER] covers the matter; and so far as I am concerned I agree to it.

The amendment was agreed to.

The amendments to the paragraph were concurred in.

The next reserved amendment was to strike out paragraph 468, on page 204, plows, tooth and disk harrows, harvesters, etc.

The VICE-PRESIDENT. The question is on concurring in the amendment made as in Committee of the Whole.

The amendment was concurred in.

The next reserved amendment was to paragraph 471, page 207, "That there shall be levied, collected, and paid upon all articles coming into the United States from the Philippine Islands," etc.

Mr. NEWLANDS. Mr. President, I should like to have that passed over for the time being until other amendments are disposed of.

Mr. ALDRICH. It seems to me we had better dispose of this matter now. I suppose the desire of the Senator from Nevada is to have a record vote upon it.

Mr. NEWLANDS. I am not now prepared to present my amendment to the amendment.

Mr. ALDRICH. I think the Senator from Nevada will accomplish his purpose by having a record vote if he desires it. If the committee amendment is voted down, then he can offer his amendment in the place of it.

Mr. NEWLANDS. I have not my amendment prepared at present, and I should like to have the paragraph passed over temporarily.

The VICE-PRESIDENT. Is there objection to the request of the Senator from Nevada?

Mr. ALDRICH. I shall not object to it, but I hope to pass this bill in the course of a few hours, and I do not see how it is possible——

Mr. NEWLANDS. If I am not ready to present my amendment when the other amendments are disposed of, the bill, of course, can proceed.

Mr. ALDRICH. I am willing to let the matter go over until we dispose of the other amendments which have been reserved.

The VICE-PRESIDENT. Without objection, the paragraph will be passed over.

The next reserved amendment was on page 215, paragraph 488, "Arsenic and sulphide of arsenic," etc.

Mr. JONES. I desire to state to the chairman of the Committee on Finance that that amendment was reserved in connection with another proposition that I had submitted. I suppose I shall lose no rights by letting it now be concurred in.

Mr. ALDRICH. None whatever.

The VICE-PRESIDENT. The question is on concurring in the amendment made as in Committee of the Whole to paragraph 488.

The amendment was concurred in.

Mr. BACON. Mr. President, there is an amendment to paragraph 468, before the last reserved amendment, which was stated. I gave notice of the reservation. I do not know whether the Senator from Rhode Island would consider that as one to be acted on now or passed over, to be considered later. It is a part of a paragraph stricken out.

Mr. ALDRICH. That has just been concurred in.

Mr. BACON. I reserved paragraph 468.

Mr. ALDRICH. The Senator from Georgia, perhaps, was not in his seat when the paragraph was concurred in.

Mr. BACON. I was; I have been here all the time; but I did not know it had been concurred in. I gave notice——

Mr. LODGE. It was stated at the desk and concurred in.

Mr. ALDRICH. The Senator from Georgia, perhaps, was out of the Chamber.

Mr. BACON. No; I was not out of the Chamber. I have not been out of the Chamber.

Mr. ALDRICH. Then, perhaps, the Senator was not quite so attentive as he usually is to the proceedings of the Senate.

Mr. BACON. That may be.

Mr. ALDRICH. I have no objection to having a vote taken again on the amendment.

Mr. BACON. I want to say that my amendment does not relate to the part of the paragraph which has been stricken out. Consequently it will not be necessary to consider that part of it; but I wish to strike out the entire paragraph.

Mr. ALDRICH. I have no objection to the vote being taken on that proposition now, if the Senator so desires.

The VICE-PRESIDENT. That can be done by unanimous consent. Is there objection to the consideration of the amendment proposed by the Senator from Georgia [Mr. BACON] to paragraph 468? The Chair hears no objection. The Senator moves to strike out paragraph 468, on page 204.

Mr. BACON. One moment, Mr. President. I have an amendment here to offer to that paragraph.

Mr. ALDRICH. I suppose the Senator from Georgia intends to follow this by an amendment to put the articles contained in that paragraph on the free list. Otherwise he would be increasing the duty from 15 to 45 per cent.

Mr. BACON. If the Senator from Rhode Island will wait a moment, he will see that that matter is provided for in the amendment which I propose.

The VICE-PRESIDENT. The amendment proposed by the Senator from Georgia will be stated.

The SECRETARY. It is proposed to strike out paragraph 468 and to insert a paragraph in the free list, to be designated as paragraph 651½, as follows:

Plows, tooth and disk harrows, harvesters, forage and feed cutters, reapers, agricultural drills and planters, mowers, horse rakes, cultivators, thrashing machines, and cotton gins: *Provided*, That articles mentioned in this paragraph, if imported from a country which lays an import duty on like articles imported from the United States, shall be subject to duties existing prior to the passage of this act.

Mr. BACON. I do not desire to discuss the amendment. It was discussed in the Committee of the Whole, but I ask for the yeas and nays on it.

The yeas and nays were ordered, and the Secretary proceeded to call the roll.

Mr. BOURNE (when his name was called). I have a general pair with the Senator from Oklahoma [Mr. OWEN], and therefore withhold my vote.

Mr. DILLINGHAM (when his name was called). I again announce my general pair with the Senator from South Carolina [Mr. TILLMAN]. In his absence I withhold my vote.

Mr. GUGGENHEIM (when his name was called). I have a pair with the senior Senator from Kentucky [Mr. PAYNTER], and I therefore withhold my vote.

Mr. LODGE (when his name was called). I have a general pair with the Senator from Georgia [Mr. CLAY]; but I transfer that pair to the junior Senator from Kentucky [Mr. BRADLEY] and vote. I vote "nay."

Mr. RAYNER (when his name was called). I am paired with the junior Senator from New York [Mr. ROOT]. If he were present, I should vote "yea."

The roll call was concluded.

Mr. CURTIS. I am authorized to announce a pair between the junior Senator from Arkansas [Mr. DAVIS] and the senior Senator from Illinois [Mr. CULLOM]. I make this announcement to stand for the day.

Mr. CULBERSON. The Senator from Arkansas [Mr. DAVIS] is necessarily absent. As stated, he is paired with the Senator from Illinois [Mr. CULLOM]. If present, the Senator from Arkansas would vote "yea."

Mr. BACON. My colleague [Mr. CLAY] is necessarily absent. He is paired, as has already been announced by the Senator from Massachusetts [Mr. LODGE]. I simply desire to say that, if he were present, my colleague would vote "yea."

The result was announced—yeas 28, nays 50, as follows:

YEAS—28.

Bacon	Daniel	La Follette	Shively
Bailey	Fletcher	McEnery	Simmons
Bankhead	Foster	McLaurin	Smith, Md.
Bristow	Frazier	Martin	Smith, S. C.
Chamberlain	Gore	Money	Stone
Clapp	Hughes	Newlands	Taliaferro
Culberson	Johnston, Ala.	Overman	Taylor

NAYS—50.

Aldrich	Brown	Burton	Cummins
Beveridge	Bulkeley	Carter	Curtis
Borah	Burkett	Clark, Wyo.	Depew
Brandegee	Burnham	Crane	Dick
Briggs	Burrows	Crawford	Dixon
Dolliver	Heyburn	Nixon	Smoot
du Pont	Johnson, N. Dak.	Oliver	Stephenson
Elkins	Jones	Page	Sutherland
Flint	Kean	Penrose	Warner
Frye	Lodge	Perkins	Warren
Gallinger	Lorimer	Piles	Wetmore
Gamble	McCumber	Scott	
Hale	Nelson	Smith, Mich.	

NOT VOTING—14.

Bourne	Cullom	Owen	Root
Bradley	Davis	Paynter	Tillman
Clarke, Ark.	Dillingham	Rayner	
Clay	Guggenheim	Richardson	

So Mr. BACON's amendment was rejected.

The VICE-PRESIDENT. Without objection, the amendment made as in Committee of the Whole to paragraph 468 is concurred in. The Chair hears none.

Mr. McLAURIN. Mr. President, I offer an amendment to put farming implements, carpenters' tools, and blacksmiths' tools on the free list.

Mr. KEAN. That has just been voted on.

Mr. McLAURIN. I should like to have the amendment read. I have a right to say what the amendment is.

The VICE-PRESIDENT. Without objection, the amendment will be read, to be offered at the proper time.

Mr. McLAURIN. I think it comes in now at the proper time, Mr. President.

Mr. ALDRICH. I am willing to test the sense of the Senate at this time by moving to lay the amendment on the table.

Mr. McLAURIN. Let it first be read.

Mr. BACON. The Senator from Rhode Island will pardon me, as his motion has not yet been made. I want to call his attention to the fact that while we were proceeding in the labyrinth of the discussions in Committee of the Whole, the Senator from Rhode Island frequently suggested that such and such matters could be left for consideration when we got into the Senate. I do not think it is fair to now move to lay such amendments as this on the table after what the Senator has heretofore suggested.

Mr. ALDRICH. I will say to the Senator from Georgia, to assure him that I have been perfectly fair, that this precise amendment was discussed and voted on as in Committee of the Whole.

Mr. McLAURIN. If the Senator prefers, I will wait with my amendment until after the other amendments are disposed of, and not ask for a vote on it at this time. Is that satisfactory to the Senator from Rhode Island?

Mr. ALDRICH. It is.

Mr. McLAURIN. That is all right, then.

The VICE-PRESIDENT. Does the Senator from Mississippi desire his amendment printed or read?

Mr. ALDRICH. It might be read.

Mr. McLAURIN. It may be that I will get an opportunity to offer it to-day.

The VICE-PRESIDENT. The Chair simply wants to understand what the Senator now desires.

Mr. McLAURIN. I should like to have the amendment printed—I did not think about that—but before it is printed I will have to have a copy of it, for we may reach the stage in the bill to-day when it can be offered.

The VICE-PRESIDENT. Then, the Senator simply desires to withdraw it?

Mr. McLAURIN. Yes, sir; for the present, for, as I have said, we may reach the stage to-day when I will want to introduce the amendment before it can be printed.

The VICE-PRESIDENT. The Secretary will state the next amendment reserved.

The SECRETARY. Paragraph 587, on page 227.

Mr. BURTON. There are one or two amendments occurring before paragraph 587 which I should like to bring to the attention of the Senate.

The VICE-PRESIDENT. Those will be considered after the committee amendments are disposed of.

Mr. BURTON. After the committee amendments?

The VICE-PRESIDENT. After the committee amendments have been disposed of.

Mr. STONE. I understand there is an amendment to paragraph 581.

Mr. ALDRICH. Paragraph 581 was acted upon, I take it, when we acted upon the provision in regard to hides on the dutiable list. That was not reserved.

Mr. STONE. No; but, at any rate, at this point I desire to offer an amendment.

The VICE-PRESIDENT. Paragraph 587 is the next amendment reserved.

Mr. STONE. I desire to offer an amendment as a new section.

Mr. ALDRICH. That will come in after the committee amendments have been disposed of.

The VICE-PRESIDENT. Unless the amendment is to some proposition reserved, it would not now be in order.

Mr. STONE. Very well; I will withdraw it and offer it later.

The VICE-PRESIDENT. The amendment is withdrawn. The question is on concurring in the amendment to paragraph 587.

The amendment was concurred in.

The SECRETARY. The next amendment reserved is in paragraph 627, page 230, models or patterns of inventions, and so forth.

The VICE-PRESIDENT. The question is on concurring in the amendment.

Mr. BURTON. In regard to that there is a very serious question among the founders located on the south shores of Lakes Erie and Ontario due to the phraseology of the amendment. At the same time I do not think there is any opposition to the general spirit and intention of the provision as it is here. The vice-president, I think, of the Pattern Makers' Association is here, and an officer representing the founders is expected here soon, perhaps to-day. I think that paragraph should be held out to see if they can not harmonize their differences upon it.

The VICE-PRESIDENT. Does the Senator ask that the paragraph be passed over?

Mr. BURTON. I ask that it be passed over.

Mr. ALDRICH. I suggest that it be concurred in, and the whole matter will then be in conference.

The VICE-PRESIDENT. The Senator from Ohio asks unanimous consent to have it passed over temporarily.

Mr. BURTON. I fear that the matter could not be properly adjusted by the conferees unless the conference committee should vary entirely from the provisions of both bills.

Mr. ALDRICH. My impression is that the matter would be the subject of conference, and that we could change it in any way that the conferees might think desirable. I think so.

Mr. BURTON. I prefer that it be passed over; but I do not want to postpone the disposition of the bill.

The VICE-PRESIDENT. The Senator from Ohio asks unanimous consent that the paragraph be passed over.

Mr. ALDRICH. I am willing that it shall go over until the other amendments are disposed of.

The VICE-PRESIDENT. Without objection, the paragraph will be passed over until the other amendments are disposed of. The Secretary will state the next amendment reserved.

The SECRETARY. Paragraph 708½, page 241, woods—cedar, lignum-vitæ, and so forth.

The VICE-PRESIDENT. The question is on concurring in the amendment.

Mr. McLAURIN. Mr. President, I do not know whether it is exactly in form or not, but I have an amendment I desire to offer to that paragraph.

The VICE-PRESIDENT. The Secretary will state the amendment.

Mr. McLAURIN. It is to put certain portions of the articles mentioned in the paragraph on the dutiable list.

The VICE-PRESIDENT. The Secretary will state the amendment.

The SECRETARY. Add at the end of paragraph 708½ the following:

> There shall be levied and collected on all logs, sticks, and pieces of pine, mahogany, lignum-vitæ, and all woods used in cabinetmaking, when imported into this country, a duty of $1.50 for every thousand feet of lumber contained therein.

Mr. CULBERSON. I ask the Senator what idea he has in view in offering this particular amendment? I do not understand it.

Mr. McLAURIN. I have this idea in view: There is a tariff of $1.50 a thousand on rough lumber. I think if there is a tariff of $1.50 a thousand on rough lumber, there ought to be a corresponding duty on the raw material out of which that lumber is made. Then, I think if there is a tariff on lumber, there ought also to be a tariff on the material out of which Pullman cars and other cars are made, and out of which cabinet furniture is made. That is my idea about that. There is a duty on furniture, and there ought to be a duty on the raw material which goes into it.

Mr. ALDRICH. I understand this has a double purpose—to produce revenue and to encourage the growth of mahogany and other woods in the United States.

Mr. McLAURIN. No, sir; I do not say that. I want to produce revenue. If you produce revenue for the Government and for the manufacturers out of the material that goes into houses, and if you produce revenue also out of the furniture, I think there ought to be revenue produced out of the raw material that goes into the furniture. That is my idea about it.

The VICE-PRESIDENT. The question is on agreeing to the amendment offered by the Senator from Mississippi [Mr. McLAURIN].

The amendment was rejected.

The amendment inserting paragraph 708½ was concurred in.

The VICE-PRESIDENT. The next reserved amendment will be stated.

The SECRETARY. Section 2 of the bill on page 322.

Mr. ALDRICH. I ask that the amendment be concurred in.

The amendment was concurred in.

The VICE-PRESIDENT. The question now is on concurring in the amendment incorporating section 3 on page 325, which was reserved.

The amendment was concurred in.

The VICE-PRESIDENT. The next amendment reserved will be stated.

The SECRETARY. Section 6.

Mr. OVERMAN. Has page 325 been passed?

The VICE-PRESIDENT. The amendments on page 325 were concurred in.

Mr. OVERMAN. I desire to offer an independent amendment, to be numbered as section 4½; and I ask the Secretary to read it.

The VICE-PRESIDENT. That would come in on page 326, would it not?

Mr. OVERMAN. On page 326, as section 4½.

The VICE-PRESIDENT. The amendment will be stated.

The SECRETARY. It is proposed to add a new section, to be known as "section 4½," to read as follows——

Mr. ALDRICH. The committee amendments have not yet all been disposed of.

The VICE-PRESIDENT. This is an amendment to a committee amendment. It is adding to the committee amendment.

Mr. ALDRICH. What is the paragraph?

Mr. OVERMAN. It is an independent amendment.

Mr. ALDRICH. Is it not to a section that was reserved?

Mr. OVERMAN. It is an independent amendment. I can withhold it and present it later.

Mr. ALDRICH. I suggest to the Senator that he do so. When the other amendments are disposed of, it will be in order.

Mr. OVERMAN. Very well.

Mr. ALDRICH. Now, I ask that the Philippine section be taken up.

The VICE-PRESIDENT. Section 6, on page 328, has not been concurred in. The question is on concurring in section 6, on page 338.

Mr. ALDRICH. The Philippine amendment should be disposed of now.

The VICE-PRESIDENT. The question is on concurring in the amendment incorporating section 6, on page 338.

Mr. BAILEY. Mr. President, that is not the Philippine amendment.

The VICE-PRESIDENT. Certainly not; but that is the next proposition that was reserved.

Mr. BAILEY. I understood the chairman of the committee to ask that the Philippine paragraph be next taken up.

The VICE-PRESIDENT. The question is on agreeing to the amendment incorporating section 6, on page 338.

The amendment was concurred in.

The SECRETARY. The next amendment reserved is section 7, on page 383.

Mr. CUMMINS. Mr. President, I reserved some of the subsections, and I hope the amendments will be called up by subsections.

The VICE-PRESIDENT. That is what the Secretary is attempting to do. If he makes a mistake, the Chair will be glad if the Senator from Iowa will correct him.

The SECRETARY. Subsection 7, at the top of page 339, was reserved.

The VICE-PRESIDENT. The question is on agreeing to subsection 7, on page 339.

The subsection was concurred in.

The VICE-PRESIDENT. Subsections 29 and 30, on page 362, to and including page 371, were reserved.

Mr. CUMMINS. I reserved subsection 12.

The VICE-PRESIDENT. The Senator from Iowa is correct.

The SECRETARY. Page 345, subsection 12.

Mr. ALDRICH. I ask that the committee amendment be concurred in. That is exactly the present law. There has not been a single word changed in it.

Mr. CUMMINS. I think the Senator from Rhode Island is mistaken about that.

Mr. ALDRICH. I think not.

Mr. CUMMINS. There is no provision in the present law which I have been able to find under which the President of the United States—

shall designate one of the board of nine general appraisers of merchandise as president of said board and others in order to act in his absence.

Nor is there any provision of law giving to that president the tremendous powers that are specified on that page and the following page. I do not intend to argue it at any length, but I regard it as extremely bad policy to vest in any one man the power that is given to the new officer created by this subsection. I therefore move to strike out, on page 346, beginning with the word "The," in line 23, down to and including the word "absence," in line 2, on page 347; to strike out lines 5 to 15, inclusive, on page 347; and to strike out, beginning with the words "the president," in line 5, on page 348, down to and including the word "therefor," in line 15.

If I understand the matter aright, the part of the section I have moved to eliminate is new, and provides for the appointment of one of the Board of General Appraisers as president of the board. It confers upon him power to divide the board, to assign the members of the board to particular cases, and to send the board, or members of it, where he desires to send it. I am informed that under the present law the Secretary of the Treasury divides the board whenever it may become necessary, and I am opposed to reorganizing the General Board of Appraisers in this way.

I do not intend to consume more of the time of the Senate than I have consumed in merely stating my objections. This is another effort to centralize the board and to increase and magnify the power of one man upon it. I am not now referring, of course, to any particular designated man, but to the man who may be selected as president of the board.

Mr. ALDRICH. Mr. President, when I made the statement that there was no change I was under the impression that special provisions which were referred to were included in the act of 1908; but I now remember that they were not. Those provisions had the approval of the committee for this reason: The Secretary of the Treasury, who now designates the president of the board, is a party to all these suits. It has been objected that at some time the question might be raised whether the man who was a party to the suit ought to select the presiding judge. It was therefore thought better that the President of the United States, who is charged with the responsibility of executing all the laws, should have this right, rather than the Secretary of the Treasury.

I think that contention is correct. I think the President, who is, as I say, responsible to the country in any event, is the man who ought to determine these questions.

Mr. CUMMINS. Mr. President, as I understand, the man who is now appointed from time to time as president of this board is merely temporarily in the office. He is displaced whenever the good of the service seems to require it. He has no power whatsoever save to preside over the meetings of the general board. The law has been very much modified and changed by these additions.

I do not believe in such a concentration of power. I do not think it is necessary that this radical change shall be made in the law in order to relieve it of the objection suggested by the Senator from Rhode Island.

Mr. ALDRICH. The only radical change is the substitution of the President of the United States for the Secretary of the Treasury.

Mr. FLINT. It is proposed to make the rule definite by statute rather than to leave it to a regulation of the Secretary of the Treasury.

Mr. CUMMINS. I again suggest to the members of the Finance Committee that much more extensive changes have been made than a mere transfer of the power of selection from the Secretary of the Treasury to the President of the United States.

Mr. ALDRICH. The only other changes are those that are necessary for the administration of the office. It is necessary, for instance, that some one shall have the right to designate the members of the other boards; that some one shall pass upon the expenses of the board. This provision simply makes the president of the board for the time being—who may, of course, be changed at any time by the President of the United States—the fiscal representative of the board as to expenditures.

It is necessary to have some one for that purpose. We must either put that matter in the hands of the president of the board or create an auditor or some other officer, which will, of course, involve additional expense. There is no additional expense involved in this proposition. The president of the board is and ought to be the person responsible for the expenditures of the board.

Mr. CUMMINS. I have no objection whatever to provision being made for an auditing officer, who shall pass upon the expense accounts of these officers of the Government. The real purpose of this provision, however, if I have been able to discern it from the language employed, is not a matter of convenience. It is to create in this board a certain power which does not now exist. For instance, I read:

The president of the board shall assign three general appraisers to each of said boards and shall designate one member of each of said boards as chairman thereof, and such assignment or designation may be by him changed from time to time, and he may assign or designate all boards of three general appraisers where it is now or heretofore was provided by law that such might be assigned or designated by the Secretary of the Treasury.

I am not myself willing to transfer the power here indicated from the Secretary of the Treasury to the president of the Board of Appraisers.

The president of the board shall be competent to sit as a member of any board, or assign one or two other members thereto, in the absence or inability of any one or two members of such board.

When you have constituted the board as here provided for, you have a board of just one man, viz, the president of the board.

Mr. FLINT. The only change made there is this: The work of the board is now conducted on the same plan by rules and regulations promulgated by the Secretary of the Treasury. This provision creates a president of the Board of Appraisers, who is authorized to designate the various appraisers that shall sit in the various boards. I think it is a great improvement over the other system.

The VICE-PRESIDENT. The question is on agreeing to the amendment of the Senator from Iowa.

The amendment was rejected.

The VICE-PRESIDENT. The question now is on concurring in section 12, on page 345, as amended.

The amendments made as in Committee of the Whole were concurred in.

Mr. ALDRICH. Mr. President, the Senator from Nevada [Mr. NEWLANDS] desires to leave the Chamber; and I ask to have now taken up the Philippine provision, 471d.

The VICE-PRESIDENT. Without objection, the provision to which the Senator from Rhode Island refers will now be taken up.

The SECRETARY. Page 207, paragraph 471d.

Mr. NEWLANDS. Mr. President, it was my intention to offer an amendment to this paragraph practically incorporating the language of the Senator from New York [Mr. ROOT] regarding our future control over the Philippine Islands. That language I will read. It was in reply to a question put by myself. It appears in the debate of June 15, 1909, at page 3357 of the RECORD:

Mr. NEWLANDS. May I ask the Senator from New York whether his proposal for training the Philippine people in self-government also involves ultimate independence; and if so, when, in his judgment, that can be attained?

Mr. ROOT. I will cheerfully answer the Senator from Nevada. My proposal to train the people of the Philippine Islands to the capacity for self-government involves the expectation and the belief that the time will come when they will be able to assume relations to the United States quite similar to those that now exist between Cuba and the United States, probably not precisely identical, because the conditions must necessarily differ, but that the people of the Philippine Islands shall assume toward the United States such a relation that they will exercise the privilege and the right of self-government under the protecting care of the Government of the United States.

Mr. President, I was desirous of providing an amendment to this paragraph, and I hoped to have for it the support of the Senator from New York. I observe that he is not here this morning, however; and I can hardly hope that such an amendment will prevail without his assistance. My purpose in offering the amendment is to define clearly our policy regarding the Philippine Islands, for our policy will be one thing if we intend to hold them in subjection forever and quite another thing if we intend to give them ultimate independence. In the latter case we should, of course, recognize them as a separate entity, with separate laws and a separate fiscal system, and not endeavor to interlock their relations with ours in such a way as to prevent separation hereafter.

I hope, however, that in taking up this paragraph the conference committee will shape it so as to express the final pol-

icy of the United States regarding the Philippine Islands, not necessarily so as to fix the time of withdrawal, to which there is much objection, but simply in such a way as to define our policy, so that we can shape our future legislative action with reference to it.

There was also another amendment which I proposed to offer to this paragraph, but I find that in order to effect my purpose it would be necessary for me to redraft the entire provision. I again suggest to the Senator from Rhode Island that in conference this matter may be shaped in such a way as to carry out the purpose I have in view, and in which I believe the President will acquiesce.

Congress, by its action, has now accepted the President's policy that all duties upon Philippine products—sugar up to a certain number of tons and tobacco up to a certain number of cigars—shall be remitted. That is done with a view of aiding the Philippine Islands to secure a certain degree of prosperity by obtaining in the United States our high prices, increased as they are by high-tariff duties. It has been estimated that the remission of these duties will mean in the future a loss to the Federal Treasury of about $14,000,000 per annum, and that that amount will go to the sugar planters and the tobacco producers. I suggest, inasmuch as the purpose of the administration is to benefit the Filipino people—the people as a whole and not simply the planters as a class—that we should take action somewhat similar to that which we took regarding Porto Rico.

Some time ago, in the early stages of our legislation regarding Porto Rico, we provided that all duties upon Porto Rican products paid into the Treasury of the United States should be set aside as a separate fund and turned over to the Porto Rican government for the development of the island. It strikes me that, following the example of that rule, it would be a very excellent idea to take one-half or even one-fourth of these duties and, instead of remitting them to the Philippine planters, turn over that amount paid into the Treasury of the United States to the Philippine government, to be used by that government, in its discretion, in the agricultural development of the islands, in the training of their people in manual industry and in their instruction in a common language.

We all know that the Philippines have not now sufficient revenue to cover these purposes. The total revenue of the islands, insular, provincial, and municipal, is only $17,000,000 per annum, and a proper school system for 2,000,000 people would cost almost that amount.

We propose to remit $14.000.000; and the question is whether we shall let that $14.000.000 go entirely to the planters of tobacco and sugar or whether we shall take a part of it—one-half, amounting to $7.000,000, or one-fourth, amounting to a little over $3,000,000—and turn it over to the Philippine Commission every year and dedicate it to the work of the development of their agricultural resources, industrial training, and instruction in a common language.

So, without formally submitting the amendment, I commend this suggestion to the chairman of the conference committee, in the hope that it will receive the approval of the President, and that this beneficent action will be taken.

Mr. LODGE. Mr. President, I desire to make a modification in the committee amendment on page 209, line 5, so as to insert the word "direct" before the word "shipment."

The PRESIDING OFFICER (Mr. KEAN in the chair). The Secretary will report the proposed modification.

The SECRETARY. It is proposed, on page 209, line 5, to insert the word "direct" before the word "shipment."

The PRESIDING OFFICER. Without objection, the change is agreed to.

Mr. LODGE. I also propose, after the word "thereof," in the same line, to strike out the words "upon through bills of lading."

The SECRETARY. It is proposed, in the same line, to strike out the words "upon through bills of lading."

The PRESIDING OFFICER. The question is on agreeing to the amendment suggested by the Senator from Massachusetts.

The amendment was agreed to.

The PRESIDING OFFICER. The question now is on concurring in the amendment, made as in Committee of the Whole, as amended.

The amendment, made as in Committee of the Whole, as amended was concurred in.

The SECRETARY. The next paragraph reserved is on page 362, subsection 29 of section 5.

Mr. CUMMINS. Mr. President, I hope these two sections will not be adopted. I do not offer any amendment to them, because I assume that at the present time the question is whether the report of the Committee of the Whole shall be adopted by the Senate regarding these two sections, which are divisible or have been divided from the remainder of the bill.

I am opposed to the establishment of a customs court of appeal for two reasons.

The first is that it is a specialized court. It is a court that is to be brought into existence for the purpose of deciding in favor of the Government under all circumstances and no matter what the law or the evidence may be. I do not say that the men who are to compose it will be other than men of high character and great ability, but they are to be experts, their judicial business is to be confined to the matter of the duties on imports, and they will speedily become, just as all such courts become, the instrumentality of the Government for collecting the revenue; and they can not retain open and impartial minds, for it is impossible that they can escape the environment that will surround them.

I have no particular sympathy for importers, but the importers of the United States are entitled to justice. They are entitled to a fair and impartial administration of the law that we pass here. They are entitled to be judged by men who have no bent and who are not predetermined against them. All that I want is a fair judicial court, a court with a mind broadened all the time by contact with other judicial questions and the rights and privileges of citizens in other capacities, and you will not have such a court when you establish the tribunal as here suggested.

It is no secret upon the floor of the Senate that the purpose of this court is to secure men who either are at the time of their appointment, or will become, experts—specialists in the construction of this law. It is no secret that it is intended to remove from the circuit courts of the United States a jurisdiction which they have hitherto exercised, in order that there may be more judgments in favor of the United States and fewer judgments in favor of importers.

I care not whether a judgment be in favor of an importer or in favor of the United States. I only care to have a judgment that shall construe the law as it is, and a tribunal that will enter upon the consideration of any such case without any fear or favor or partiality for or against either of the litigants. You will find it, I believe, a grave mistake to erect a judicial tribunal of this sort.

So long as the Board of General Appraisers was a mere administrative tribunal, and so long as it was the final tribunal save as cases might be reviewed by the regularly constituted courts of the United States, no scandal could arise, because they recognized themselves to be but administrative or executive officers of the United States. But you are now attempting to draw the judiciary into the prejudices and the plans of those desiring to have the laws of our country so construed that importers shall have no chance whatsoever in their construction of the law.

I am opposed to it, secondly, because it is adding another expense to the Government of the United States. We have heard here the distinguished Senator from Rhode Island [Mr. ALDRICH] say that he intended to lend all the weight of his great influence to a more economical administration of our affairs; that he believed that in the next year we might reduce our expenditures by $35,000,000; and yet in the very bill concerning which he was debating we find a provision that will enlarge the expenses of the United States by two or three or four hundred thousand dollars per year. We find a provision creating a court of five judges, who not only may sit in New York, but in nine of the principal cities of the United States. And there must be court rooms and marshals and bailiffs and stenographers and clerks, and a part of this paraphernalia is to follow these judges as they travel from place to place in the country. You are beginning an expense that must eventually be a very serious burden upon the already overburdened people.

There is no necessity for this additional expense, and I for one am beginning now to retrench. There is no other time than the present to begin the work of reducing the expenses of the United States, or at least to prevent the increase of its expenses. Every session there will appear just such measures as this, which are believed to be wise and helpful, and of which it will be said that they will add more to the revenue and more to the privileges of the people of the United States than they cost. But we will go on and on, session after session, adding these expenses until we will need not only the revenue derived from a corporation tax, but we will need the revenue derived from all the other taxes that have been suggested during the course of this debate.

I therefore hope that this unnecessary addition to our judicial establishment and this unnecessary addition to the expenses of

our Government will not be entered upon, and that these two sections will not be adopted by the Senate of the United States.

Passing the question of establishment, when I come later to the matter of detail, I shall hope that at least the Finance Committee will see its way clear to eliminate that part of the expense entailed in the multiplication of places in which the court is to be held. This is a court of review or appeal. It is to determine its cases upon written or printed records. There will be no witnesses. There need be the attendance of no lawyers unless they desire to submit their cases upon oral argument; and therefore the court, if it is to be established, ought to hold its sessions in the city of Washington and no where else, and we would in that way eliminate a great deal of the expense without inconveniencing either suitors or their attorneys. I know that at the present moment that amendment can not be considered. It is now simply a question whether the court shall be established at all. I sincerely hope that we will stop in this what seems to me to be a mad race for the enlargement of our expenditures, and at least when we do enlarge our expenditures let us do it in behalf of the people in some measure of reform, or some measure in which we can better care for the interests and the welfare of the great multitude.

Mr. BORAH. Mr. President, I do not desire to discuss this matter, but I wish to insert in the RECORD a schedule showing the number of appeals from the Board of General Appraisers to the circuit court from May 1, 1908, to April 30, 1909, in the southern district of New York, where the great portion of these appeals arises; also a schedule showing the appeals taken in appraisers' cases from the circuit court to the circuit court of appeals.

The PRESIDING OFFICER. Without objection, the schedules will be printed in the RECORD.

The schedules referred to are as follows:

SCHEDULE I.

APPEALS TAKEN FROM BOARD OF GENERAL APPRAISERS TO CIRCUIT COURT.

May 1, 1908, to April 30, 1909, southern district of New York.

Number of appeals taken	207
Number of days on which court sat for the hearing of this class of cases exclusively	24
Number of such cases argued	71
Number of such cases decided after argument	71
Number of such cases decided by consent without argument	259

Correct:

JOHN H. SHIELDS,
Clerk U. S. Circuit Court, Southern District of New York.

SCHEDULE II.

APPEALS TAKEN IN APPRAISERS' CASES FROM CIRCUIT COURT TO CIRCUIT COURT OF APPEALS.

May 1, 1908, to April 30, 1909. Second circuit.

Number of such cases argued	54
Number of such cases decided after argument	54
Number of such cases decided by consent without argument	5
Number of full days, estimated as near as can be, occupied with the argument of this class of cases	15

Correct:

WM. P. ARTIM, *Clerk.*

Mr. BORAH. I also desire to put into the RECORD a letter from Judge Lacombe in reference to this matter. I want to say in introducing these papers that, so far as concerns the work necessary to be done by the proposed court, it seems to me to be very small, indeed, for the expenses to be incurred.

Mr. DOLLIVER. If the Senator from Idaho will pardon me, I should like to have the letter of Judge Lacombe read.

The PRESIDING OFFICER. Without objection, the letter will be read.

The Secretary read as follows:

UNITED STATES CIRCUIT COURT, JUDGE'S CHAMBERS,
New York City, May 8, 1909.

Senator JONATHAN P. DOLLIVER.

DEAR SIR: In response to request contained in your letter of May 5, 1909, I herewith inclose tabulations of certain cases concerned with the review of decisions of the Board of General Appraisers.

The schedules marked "I" and "II" are the precise things asked for, but since the year covered runs from May 1 to April 30, while the court year runs from October to October, they are in some respects misleading. For example, in the circuit court (southern district of New York) there were on May 1, 1909, a number of appeals from the board still on the argument calendar awaiting disposition; but there is a two weeks' session assigned specially for them in May and, if all are not then disposed of, an extra session for the same purpose will be held in June and continued until the calendar of ready cases is disposed of. It has for many years been the practice to hold such a session whenever the district attorney advises the court that there are cases left over from the regular assignments, in order that in this class of cases all issues in which both sides are ready for argument may be heard before vacation. It is rarely, however, that such an extra session is required, the time regularly allotted each year for these cases being amply sufficient; indeed, it often happens that a judge coming to hold a two weeks' session finds himself out of business before the session has expired.

It appears that the number of appeals taken during the period was 207, while the number of cases disposed of was 330; evidently many cases held over from some prior year to await the decision of a test case were disposed of this year by the rendition of such decision.

In the tabulation for court of appeals it has been necessary to include two months (May and June) of the prior year, and the May and June sessions of this year do not appear. This last circumstance, however, is not material since all the appeals of this class which were on the calendar for 1908–9 were heard or disposed of before May 1, 1909.

It should be noted that, by reason of the fact that in some instances two or more cases involving the same questions were argued together, the actual arguments were only 45. The estimate of time is believed to be fairly accurate. Under the rules one hour is given to each side for argument of this class of appeals. It very rarely occurs that any further time is asked for, while in the great majority of instances very much less time is consumed, and in many instances fifteen or twenty minutes on each side is the extent of oral argument. Allowing one hour for each argument, the time consumed would be forty-five hours. The court sits from 10.30 a. m. to 1.30 p. m. to hear argument, devoting the afternoons to work in the consultation room. This would give fifteen full days for hearing 45 arguments. The clerk calculates from his rough notes of actual hearings taken in the court room that twelve days only were consumed. The number given, fifteen, is certainly a liberal estimate.

I take the liberty of inclosing some other tabulations, which were not asked for, but which may be of interest to you. They are the same statistics, continued down to last year, which were before the Judiciary Committee of the House, Fifty-ninth Congress, first session, and are printed in a document entitled "Hearing in Relation to Additional Judge for Southern District of New York" (S. 5533, 1906).

Speaking generally of the statistics of judicial work, it may be premised that those most readily available for the information of Congress—the Reports of the Department of Justice—are misleading, for two reasons: First, they deal with the fiscal year ending June 30, while the court year runs from October to October, with but little work done in July, August, and the early part of September. Second, they make no distinction between live cases and dead ones. Thus an action may be begun by the service of a subpœna, and thus be entered on the clerk's registers, but it may be continued for months and years without making any business for the court; and if it dies a natural death by settlement or otherwise, usually no one bothers himself to call that fact to the attention of anybody or to have the cause ordered discontinued and struck from the record. The figures 13,826, given on page 149, Report of Attorney-General, as representing the cases undisposed of July 1, 1908, are wholly misleading. They include the accumulated wreckage of generations of abortive litigation.

In other parts of the country the number of docketed causes is a fair exponent of the condition of business, because a cause when once docketed is automatically progressed to some conclusion. But under the practice in New York the really live causes are those which, by the filing of a note of issue, have reached the calendar; those only are actually pending in the court, so as to make business which consumes its time. So, too, in the court of appeals a cause goes on the register when the record is certified from the court below, but it makes no business for the court until the parties have the record printed and move the cause to the argument calendar. Thus the figures given out by the Department of Justice showing causes undisposed of in that court would give the impression that it was behindhand with its work each year. (See Exhibit 5, Report of Attorney-General, 1908.)

This is no mere surmise. In Document 683, Sixtieth Congress, second session, Hearings Before a Subcommittee in Relation to the Customs-Administrative Laws, it is apparent that the witness, a careful and experienced public officer, was thus misled. He says: "In the circuit court of appeals for the second circuit * * * there were pending and undecided on July 1, 1907, 128 matters, and docketed during the fiscal year 1908, 286 matters. There were disposed of during that fiscal year 281 matters, and therefore pending July 1, 1908, 133 matters," and naturally impressed by these figures he refers to the overburdened calendars of that court.

The fact really is that since the court of appeals in the second circuit was organized it has invariably remained in session each term until every cause on its calendar for argument was heard, except those where the parties agreed to a continuance till the next term, because of the pending of some test case elsewhere or for some other good reason. How few these cases are will be seen by reference to Table A, inclosed. The calendars are heavier in some years than they are in others, but have never been so overburdened as to prevent our disposing of all cases ready to be heard by the early part of June.

Besides the cases in the circuit court registers, which may properly be called dead, there are others which are merely temporarily suspended awaiting the final decision of some leading case involving the same or similar questions to those presented in the case thus held back. The litigation known to the clerk's office as "appraisers' appeals" is especially prolific in this particular, as must be apparent to anyone who considers the character of such litigation. To-day there are undoubtedly thousands of suspended protests before the Board of General Appraisers awaiting the solution of some legal question presented in a test appeal, but upon inquiry at the district attorney's office as to the size of the calendar to be called at the session of May 10, I am informed that there are not altogether more than 70 independent issues, and that of these there will probably be ready for argument not more than enough to occupy the allotted two weeks. As was stated before, if there are any left over they can readily be disposed of in June.

Referring now in detail to the additional statistics:

Table A gives the total appeals which appeared on the calendar of the court of appeals from October, 1892, to the end of the court year preceding the present (unfinished) term.

Table B distributes those appeals into groups indicating the different branches of jurisprudence with which they were concerned. It shows that during sixteen years the total number of appeals argued and disposed of in customs cases was 462.

Table C represents an effort to indicate, somewhat imperfectly, the relative complexity of the questions presented for solution in the different groups. Two circumstances combine to make the amount of discussion given to the customs cases small when compared with patents or admiralty, where voluminous testimony as to facts calls for analysis and discussion: First, many of the cases involve substantially the same question, some slight variance having induced one side or the other to try to differentiate more recent importations from similar ones already disposed of; and, second, the questions presented are almost wholly questions of law, and in the great majority of cases involve only the construction of a single clause in a statute.

The remaining tables deal with circuit-court work. Table D shows what number of appraisers' appeals came on for hearing at each session of the court in each calendar year, and what number of them were then disposed of. Generally speaking, however large was the number appearing on any calendar, all causes actually ready for argument were then disposed of. Of the cases carried over to a later session many were disposed of by the parties in the interim. For example, it will be seen that in 1903, at the January session, there were 229 cases on the calendar and only 52 then disposed of, leaving 177 to go over. But at the next session in May there were only 51 cases on the calendar, all that were left of the 177, plus whatever new issues were added to the calendar. As was stated before, in every year at the last session before vacation every cause on the calendar in which both sides were ready has been heard.

The headings in this table are somewhat fuller for the last four years, covering cases disposed of by consent which did not appear on the calendar. The reason why the figures in the column heading "Disposed of in session of court," are occasionally higher than those given in the column headed "On calendar," is that the clerk has included with the cases disposed of after argument a few cases where, during a calendar hearing both sides appeared and agreed to orders disposing of cases which had not been placed on the calendar. It will be observed that this table covers whatever increases there may have been in litigation of this character ensuing upon the passage of the tariff acts of 1894 and 1897.

Table E shows the appearance and disposition of equity causes on the calendars of each calendar year.

Table F gives similar data as to the civil causes to be tried with a jury. It may be stated that the calendar has been called through and that all causes in which parties are ready for trial will be heard before vacation.

No tabulation as to criminal business is included for the reason that prior requests for statistics did not include that branch of the business, and without the assistance of earlier compilations it would take a long time to prepare such tabulation. I am advised that by the end of June every jail case now pending can be disposed of.

I am sure I express the opinion of all my colleagues as well as my own in stating that the circuit court of appeals for the second circuit and the circuit and district courts in the southern district of New York will have no difficulty in disposing of the cases which now come before those courts, including the normal increase for several years to come, without delay or congestion or any overburdening of their calendars.

Yours, very truly,

E. HENRY LACOMBE,
United States Circuit Judge.

Mr. DOLLIVER. Mr. President, I do not desire to prolong the debate, but it seems to me that we are about to enter upon a very undesirable field of legislation.

Within my time in Congress we have very greatly enlarged the facilities and increased the expenses of the custom-house at New York. I do not complain about that, because we have very greatly increased its efficiency. Twenty years ago it was almost impossible to get an authentic valuation of the merchandise entered at that port. Since that time, by the addition of bureaus of chemical analysis and other modern mechanism of a port of entry and by scattering throughout the market places of the world our expert detectives and inspectors, we have made it altogether possible in most cases to arrive with accuracy at a just valuation of imported merchandise.

Twenty years ago and more, I think in 1890, we created this Board of General Appraisers, a board considerable in number and very considerable in dignity and authority, even judged by the salaries appropriated for their maintenance.

They have a very limited variety of questions to decide. They decide questions on appeal affecting the valuation of merchandise, and besides that they have just one sort of question to decide, and that is the proper legal classification of merchandise.

So far as their duties affect the valuation of merchandise, they have been performed with a reasonable degree of skill. At any rate, whatever they have done is made final by the law and there is no appeal from their decision, so far as the valuation of imported merchandise is concerned. The only questions that come up on appeal are questions of classification.

Congress has been working for years to so classify imported merchandise that it would be obvious to merchants as well as to the officials of the Government at what rate of duty it is actually assessed, and in order to be certain that these classifications are correctly applied to merchandise they have maintained for twenty years this Board of General Appraisers in the city of New York.

There have been a good many questions arising as to the proper legal classification of merchandise; and when there was a difference between the importer and the Government as to the matter and either was dissatisfied, we have had an ordinary appeal of the case to the circuit court of the United States, and thence to the circuit court of appeals, and in rare cases to the Supreme Court of the United States. The circuit court of the southern district of New York has well and faithfully discharged the duties of correcting the errors made by the Board of General Appraisers.

I think the record can be searched in vain for one decision of that court that has not been in accordance with law and good sense, in the disposition of the case.

Therefore, the only question involved is whether these courts of the United States are burdened and hampered by the multiplicity and the difficulty of these little lawsuits. I speak of them as little because many of them involve very minor matters, although some of them involve large sums of money. But the question is, What does the tariff law of the United States mean? That is the only question they have up for decision. We have been trying for twenty years to get the matter so simplified that almost anybody would know what it means, and the time is coming in the United States when anybody will be able to interpret a tariff law made by the Congress of the United States.

I say, first, that these judges entertaining appeals from the Board of General Appraisers have invariably decided the cases correctly. I would be perfectly willing to stake this entire question upon the fact that this circuit court of the United States, executing our law and taking the evidence introduced, has made a fair and reasonable and sensible application of the statute to every case that has been heard.

A few cases have been appealed to the circuit court of appeals and the chance errors corrected. Occasionally a case has gone to the Supreme Court of the United States for the correction of obscure errors, usually on a writ of certiorari.

Now, then, the only question left is whether these courts are so burdened by this litigation as to require relief.

I was interested in that question, and I took the liberty—although I am informed on the floor just now that it is a very unseemly thing for a judge of the United States court to interest himself in legislation here—I took the liberty, hearing that these courts were burdened and swamped by these litigations, to direct a letter to Judge Lacombe, of the southern district of New York, asking him to have the clerk of his court furnish me with the statistics of pending suits and such information as would enable me to come to a reasonable conclusion as to whether that court ought to be relieved of its burdens. He was kind enough, and, I will venture to entertain the opinion, entirely within his official rights, to answer in the letter which has been read from the desk, in which it appears that instead of being burdened by this litigation this great court of the United States has handled it year after year with ease and with very limited loss of time. The questions they have to decide are simple. The question is, What does this law that we have passed mean as applied to particular merchandise? And instead of being crowded with that litigation, they have handled it comfortably and with ease; and instead of bungling the decision of these questions, they have invariably decided them with a strict accuracy, applying the laws which we have made.

Yet here we come with an agitation, arising I know not in what quarter, asking us to create a new court in the United States with lifelong tenure.

Mr. CLAPP. Will the Senator pardon a suggestion?

Mr. DOLLIVER. Certainly.

Mr. CLAPP. If he will study the map as disclosed by this provision, he will probably locate the source of the demand to some extent.

Mr. DOLLIVER. I am engaged now in suppressing rather than cultivating my suspicions, and I certainly do not desire at this stage of our proceedings to even hint——

Mr. BAILEY. Will the Senator permit me?

Mr. DOLLIVER. Certainly.

Mr. BAILEY. The Senator from Minnesota is not generally suspicious. I have never known him to utter an unjust suspicion on this floor before. The city of Galveston is in the provision, and I put it there in the committee the first time I had ever heard about that court provision. It does not become a Senator like the Senator from Minnesota to suggest that Senators are engaged in legislation with reference to local interests.

When I was first called to the committee I found they had no place probably from Baltimore all down the Atlantic seaboard to the Mexican Gulf. They did have New Orleans. Instantly I said, "That great Gulf coast there is entitled to a session of this court," and upon my suggestion, or upon my motion, it was put in. But it was put in without any suggestion or any supposition that it had any relation to the origin or even to the adoption of this amendment.

Mr. CLAPP and Mr. LODGE addressed the Chair.

The VICE-PRESIDENT. Does the Senator from Iowa yield; and if so, does he yield to the Senator from Minnesota or the Senator from Massachusetts?

Mr. DOLLIVER. The Senator from Minnesota already had the floor, and I yield to him.

Mr. CLAPP. Mr. President, it is not often that I do suggest anything of the kind, but when I see a measure associated with the matter of the judiciary, that presents the peculiar phase this

measure presents, I can not but believe that the chairman of the committee found it advisable to recognize and reconcile different sections of the country in support of the measure.

Mr. ALDRICH. Mr. President——

Mr. CLAPP. I propose, before the matter comes to a vote, to discuss the peculiarities of this measure in that respect.

Mr. BAILEY. If the Senator from Minnesota will take my advice, as his friend, he will find some other objection to it, because I know that that is not a true one.

Mr. ALDRICH. Mr. President——

The VICE-PRESIDENT. Does the Senator from Iowa yield to the Senator from Rhode Island?

Mr. DOLLIVER. Certainly.

Mr. ALDRICH. I am more surprised than the Senator from Texas at the suggestion of the Senator from Minnesota. That any action with reference to places at which these courts are to be held had anything to do with the preparation of the bill or its adoption or recommendation is simply ridiculous and absurd, and it is not worthy of the Senator from Minnesota. It was——

Mr. CLAPP. In reference to that language, the Senator from Minnesota will determine as to what he may consider worthy of his consideration or not.

Mr. ALDRICH. I suppose he will; but, Mr. President, it was important of course that this court should meet at different parts of the country. It is to be a court to determine finally upon duties to be assessed and upon classifications, and it was important that it should meet in different sections of the country. It was the purpose of the committee to include all sections of the country in a fair distribution of the meetings of the court, and I think they were successful. It had nothing to do with any support of the bill from any source. They simply intended that the sessions of the court should be held in different parts of the country for the convenience of litigants and all the parties interested.

Mr. LODGE. Mr. President——

The VICE-PRESIDENT. Does the Senator from Iowa yield to the Senator from Massachusetts?

Mr. DOLLIVER. Certainly.

Mr. LODGE. Mr. President, I merely want to say one word in reply to what I think is an extremely uncalled-for suggestion on the part of the Senator from Minnesota.

This measure, which some of us regard as a very important measure indeed for a proper collection of the revenues of the United States, was put in, and it was provided that the court should sit at certain cities. In the great cities of the country, Mr. President, what consequence is it whether a court sits there or not. In the great cities they do not know whether the court is sitting there. The courts are there for the convenience of the litigants. Does the Senator suppose that it is a great help to New York or Philadelphia or Boston or New Orleans or Galveston whether one court sits there more or less? It may be important to some back-country village, but it is not known in the big cities.

This provision was made, as I understand it—and I voted for it for that reason—to get a better uniformity in court decisions, to secure a more prompt trial of customs cases, and to help in the just administration of the revenue laws, whatever those laws may be as established by Congress.

As for the cost, I believe it will save to the Government and the litigants a thousand times all the cost that it may be to the Government.

I do not want to argue the merits of this proposition, which I think an extremely important one, but I do resent the suggestion cast at the committee that members of the committee, Democrats and Republicans alike, were engaged in supporting a great measure of this kind because, forsooth, they wanted to have a court sit in some great city that happened to lie within their borders. I do not know a member of the committee who thought anything about it from that point of view. Do we vote for the establishment of circuit courts of the United States because we hope they will sit in our States or our districts or our cities? We establish the judicial circuits of this country for the convenience of the litigants, and the courts have to sit at properly representative points in all the great sections. It is a mere detail in the establishment of any court.

Mr. President, it seems to me it is possible for us to discuss great measures without suggesting that those who support them or oppose them are influenced by petty or unworthy motives.

Mr. DOLLIVER. Mr. President, it interrupts somewhat the line of discourse which I was pursuing to hear these heated explanations and disclaimers as to the location of these courts. I did not intend to inquire into that, except to say that one of the objections which has been made to me by merchants living in the cities more remote from New York is that the location of the court there, without any definite fixing of a term, is likely to leave them with the promise——

Mr. LODGE. The Senator knows the court is to be in Washington.

Mr. DOLLIVER. Yes. These people seem to think that they will get a statutory session of the court in Galveston, Boston, Chicago, and at various other good places, without that contact with a court which sometimes may be thought to be convenient and useful to litigants and other parties. But I am not going to discuss that. I lay down the proposition in cold blood here that there has never been any just complaint either of delay or of the miscarriage of justice by allowing these appraisers' cases to be adjudicated in the circuit court of the United States.

The circuit court of the United States is in session in all of these cities, and if questions arise as to the classification of merchandise, such questions can be instantly transferred to that court and almost immediately disposed of. Therefore to create this new court is, in my humble judgment, a sheer waste of our public funds by the multiplication of machinery for the administration of our customs laws.

Look at the list of public officials that will ultimately find comfortable shelter in some quiet corner in the custom-houses of the United States; look at this list of salaried officials, and then consider that, with the circuit court sitting, we have efficient machinery to dispose of these cases now without another dollar of appropriation; consider also the fact that existing courts have well and faithfully disposed of these cases up to this time; yet we sit here creating now a strange judicial apparatus, hitherto unknown to our laws, and we start them out with an aggregate appropriation almost equal to the sum required to maintain the dignity of the Supreme Court of the United States.

I suggest, not as a party matter nor as a tariff matter, but just as a plain matter of business administration, that until some judge of the United States can be shown to have abused his office by deciding wrongfully these cases, until some circuit court of the United States can be found that is overpressed with business, owing to the multiplication of these cases, we ought to stop, even in the midst of our haste and panic, to finish this matter, to inquire of our better judgment whether it is wise now to superimpose on the complex machinery of our customs tariff laws this new judicial tribunal, with a life term of office, unknown hitherto to our laws, and which starts out with a bill of expenses equal to the entire cost of maintaining the Supreme Court of the United States.

Mr. CLAPP. Mr. President, I listened with a great deal of interest to the argument made by the junior Senator from Iowa [Mr. CUMMINS]. I am rather inclined to deal plainly with matters. The suggestion which he made is, I think, sufficiently plain, that here is a purpose to create a court not in the general spirit of courts, but a court for a particular purpose, and a court that by every logical sequence would sooner or later become what I may broadly state, a somewhat one-sided tribunal. If when I came into the Senate eight years ago I had proposed such a measure as this, the Republicans who to-day are in control of this bill would have characterized it as "Populism born of the West;" but in these days of rapid transition and the absorption of Populistic measures in this bill, I, even though fresh from the invigorating climate and atmosphere of the West, can hardly keep up with this committee.

I object to this upon the very ground stated by the junior Senator from Iowa. I believe it will be an unfortunate day for this country when we enter into the process of creating tribunals the very association of which, the very logical sequence applied to which, will make these tribunals instrumentalities for forwarding the particular purposes of any class of people or as between the Government and the citizen—and I do not care how reprehensible the citizen may be—as between the Government and the citizen, and that the purpose of the Government. This will be followed by other steps creating other tribunals.

I have simply been astonished in this Chamber that the conservative spirit which dominates the Republican party here should enter upon a career of this kind.

I warn them now, although perhaps the warning is gratuitous and but little appreciated, that this is but the beginning; that following this will come schemes and plans for other tribunals like this on specific and particular lines. I care not how honest and how sincere the men may be who are to be appointed to this office, sooner or later they will feel instinctively, by a process the force of which no man can escape, that it is their duty to see that a particular line of policy pursued by this Government shall be carried out.

But more than that, Mr. President. There is absolutely no use for this court, as appears from these returns. Here is a circuit

court of appeals and here is a circuit court for the southern district of New York. In the one there were about three hundred and odd cases in a year. The number of days which the court sat hearing these cases exclusively was only twenty-four; the number of cases argued was 71; the number of cases decided was 71; and there were 259 cases decided without any argument whatever. Then in the circuit court of appeals there were 54 cases argued; there were 54 cases decided after argument; and the number of cases decided without argument was 5. The number of days consumed by that court in deciding those cases was, according to the certificate of the clerk of that court, only fifteen; and yet for this purpose it is proposed to create a trbunal that shall cost almost as much as the Supreme Court of the United States.

The worst vice of the bill is that the service of these men and of this tribunal that is created to serve the public will be limited to this particular business and no other. If the courts are overburdened with work, our duty should be to relieve them by additional judges, who may not only decide these cases, but may serve the public in the decision of any case that the public has occasion in any form to bring before them. Yet for this small amount of business it is proposed to create a new court, to limit that court to this particular work, and to so limit them that they can render the public no other service.

Mr. President, for one I can not see why a Senate, embarking upon a proposition of economy, organizing a great committee for the purpose of economizing in the expenses of this Government, should at this particular time launch a proposition of this kind.

Now, a word in regard to the interruption which I made of the Senator from Iowa. I once heard a distinguished Senator from Massachusetts stand on this floor and bewail the fact that there should be anything like logrolling in a river and harbor bill. It struck me, Mr. President, as rather peculiar, because we all know that a river and harbor bill is the result, in the last analysis, of a good deal of that process which in the popular mind and vulgarly speaking, perhaps, may be termed "logrolling."

Now, I propose to say, distasteful as it may be, that these tariff schedules have been arrived at largely by reconciling different sections of this country. In saying that, no reflection is intended, and no suggestion of reflection could be drawn from my remarks, upon the men who have participated in framing this bill.

When I came to look at the provisions for the sitting of the court, I was very much impressed by the suggestion made by the junior Senator from Iowa that the proper place for this court to sit would be at the city of Washington. Here the great Interstate Commerce Commission sits; and while it is true its members may go forth into different parts of the country, yet, so far as providing for organized sessions as provided in this bill, we naturally make the city of Washington the center of their operations. In my judgment, if we are going to have this court, it should sit in the city of Washington. The hearings before this court will come in the nature of appeals, in the nature of the work of review. They will come here very largely upon evidence prepared before the appraisers. But, upon examination of this provision, I found that in the bill adjacent to New York was the city of Boston. I am willing to say that, in my humble judgment, there is no necessity for that court sitting at two points so near each other as New York and Boston. If they are not going to have their central place of business in Washington, it would be well enough to have one sesssion on the North Atlantic seaboard, another session on the South Atlantic seaboard, and another session on the Pacific coast. But we turn to the Pacific coast and we find Portland and Seattle almost within a stone's throw of each other, and yet each of those towns is provided for; and the next sitting of the court is located at Galveston.

The distinguished Senator from Massachusetts [Mr. LODGE] suggested that it was of no account or value to a city to have this court sit at a particular place. I realize that the great commercial centers of this country will go on and prosper even if this court does not sit within their limits; and yet I realize, as the Senator from Massachusetts and as every other Senator realizes, that in a bill of this kind cities are proud to be represented; they are proud to be named; and it is idle here to ignore the idea that there is nothing in that sentiment.

We next reach the city of Chicago; and then from Chicago to the Pacific coast there is no session of the court provided for. I made up my mind to one thing when this bill came into this Senate, and that was, I would not be driven into a position of surrendering my rights for favors. I have not and will not. If the committee and the Senate do not see fit to treat that section fairly, it may treat that section otherwise; but I will take my chances and responsibility. But from the city of Chicago to the western coast of this country, with the Canadian border stretching that entire extent, there is no provision for a sitting of this court; with the Great Lake ports, with the great ports at St. Paul and Minneapolis, with all that boundary reaching, as I have said, from the Lakes to the ocean, there is no provision made.

I am not complaining of that. I could not have asked the committee to put such a provision in this bill, for I am not here asking any favors at the sacrifice of my rights, but when I see the bill in this form, without intending any reflection upon any Senator, without impugning the motives of any Senator, simply because of the general understanding that localities take pride in having such tribunals located in their midst, and that Senators and Members of the House of Representatives take pride in serving their localities, I make the suggestion as to the geography of this provision.

Mr. President, I say again that if the sittings of this court are distributed over the country, there is no necessity for a court at New York and immediately at Boston; there is no necessity for one at Philadelphia and immediately at Baltimore. There should be one on the Gulf coast; there should be one on the South Atlantic; there should be one at Chicago; and there should be one somewhere upon the Great Lakes; but we find that vast area without any provision made for it at all.

I regret, Mr. President, that the matter of creating the proposed court was ever associated with a tariff bill, because we know—and there is no use in trying to disguise the fact—that a tariff bill is of necessity largely a matter of give and take between localities and the representatives of localities. This matter never should have found its way into a bill in this atmosphere, this surrounding, and this absolutely incidental environment. If we are to create a court, we should have created it independent and separate of any such conditions as now exist.

I want to enter my protest here, in view of the fact that we started out last March upon a policy of economy, of now establishing a court that will cost approximately as much as the Supreme Court of the United States, and yet tie the hands of that court so that it can not serve the American public except along the line of a certain service, although, according to statements which have been made, one of the courts charged with the hearing of customs cases spent a total number of twenty-four days and another a total number of fifteen days in the consideration of this class of cases.

Mr. BORAH. Mr. President, I simply want to ask a question or two before this proposition is finally put to a vote. I presume that it is proposed to create this court for one of two reasons—either because the federal courts are overburdened with work, or because it was the idea of the committee that the customs laws had not been properly administered or interpreted by those courts.

The Senator from Massachusetts [Mr. LODGE] suggested that this court would save hundreds and thousands and even millions of dollars to the United States. I can not imagine how that could be done, unless it arises out of the fact that the decisions of the federal courts have been such as to wrongfully deprive the Government of that money. If the decisions were in accordance with the law—and that is probably a legitimate assumption—it could hardly be said that the proposed court would increase the revenues of the Government, unless we would assume that they would interpret the law not according to the law, but according to the getting of revenue.

Mr. HALE. Mr. President, if the Senator will allow me——

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Maine?

Mr. BORAH. I yield to the Senator. I asked for information and am very glad to yield.

Mr. HALE. I think one consideration that was very strong in the minds of the committee was the testimony that came before the committee, that the interpretation of the statute relating to the revenue and duties and classification was almost invariably in the direction not of the original statute, but in the way of amplifying it, and that the result was almost always against the Government.

I do not believe that resulted from any undue bias on the part of the courts; but the whole subject of revenue duties and of construction has become so vast that the committee believed that a single court dealing with these subjects would be better for the Government, be better for the suitor, and in the end would work out a better administration of justice than if the decisions were dispersed through the different circuit and district courts of the United States.

I do not, for one, very much believe in transferring this court to Washington. Almost all of the cases with which it will deal will arise in the great ports of the country; and I think they

can be better dealt with if the court is established and has its central place where almost all the business arises, namely, in the city of New York. I do not think it adds anything to the weight of the court to summon it here to Washington. I think the parties who are litigating will find it more convenient in New York; I think the attorneys who present the cases will be more competent in New York than in Washington; the witnesses, as has been suggested, will be there, and almost everything will be done there. That part of the plan had no special force in my mind; but that there should be one court that would settle all these cases, and settle them speedily, I think was the unanimous view of the committee.

Mr. BORAH. Mr. President, the Senator from Maine has been very frank as to the object of creating this court; and it is the purpose which, we have understood in a way, has been the prevailing one with the committee. To my mind, it presents an impassable barrier to the support of this amendment. Certainly there has not been an insufficient time upon the part of the circuit courts to deal with these subjects. The record here discloses that the cases have been disposed of without any unnecessary delay.

Mr. ALDRICH. Mr. President——

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Rhode Island?

Mr. BORAH. I do.

Mr. ALDRICH. Bearing upon the point that the Senator now suggests, I should like to make a statement for the committee.

In 1908 a bill passed the House of Representatives and came to the Finance Committee, providing for an immediate appeal from the Board of General Appraisers to the circuit court of appeals instead of to the district and circuit courts. While that bill was pending before the committee Judge Lacombe, whose letter has been read here to-day, joining with the other judges of the circuit court of appeals in New York, wrote a letter to me as chairman of the Finance Committee, which I think ought to be read, because Judge Lacombe, in connection with the other judges of the court of appeals in New York, took exactly the opposite position from that which they now take with reference to the pending legislation. I think it is rather important that the letter should be read, not as bearing upon the question whether or not the court ought to be constituted, but bearing upon the question whether the business of the court is congested. Many of these cases involve millions—in some cases fifty or sixty or seventy million dollars—and there are customs cases now pending that grew out of the act of 1883 which are not yet settled. I think the letter of Judge Somerville to the President ought to be read in this connection, which shows distinctly——

Mr. FLINT. I have sent the letter to the desk, and I ask to have it read.

Mr. ALDRICH. It shows distinctly that there is a great class of cases involving millions of dollars that have not yet been decided, growing out of the acts of 1883, 1890, and 1894. I should like to read Judge Lacombe's letter.

Mr. BORAH. I have no objection to reading the letter; but I merely want to say that it can be demonstrated certainly, if those delays exist, it is by reason of the action of the litigants and not of the court.

Mr. FLINT. Mr. President, if the Senator will permit me——

Mr. BORAH. We are all familiar enough with the trial of cases in courts to know how attorneys continue cases to await action on some specific issue to be settled, and so forth. I venture to say that it will not be shown here that these delays are by reason of the action of the court, but that they are by reason of the action of litigants.

Mr. FLINT. In the New York circuit, I think you will find that cases are only put upon the trial calendar by agreement of counsel. The result is that they can not get an agreement. The counsel in customs cases, the customs brokers, and the attorneys intentionally delay these matters for the reason that customs attorneys take the cases on contingent fees; and by delaying the matter they can reap thousands and thousands of dollars, it is estimated sometimes five or six hundred thousand dollars a year, in attorneys' fees out of this class of litigation. The very purpose of the creation of this court is to have such cases tried as they are presented and not have the delay that now ensues.

Mr. BORAH. Mr. President, that can all be corrected by statute, without the creation of a new tribunal. A new tribunal will have no more to do with it than the present tribunals, unless you do have a statute.

Mr. ALDRICH. If the Senator will allow me, I will read this letter of Judge Lacombe.

Mr. BORAH. Certainly.

Mr. ALDRICH. I think it is pertinent and bears upon this question.

Mr. CLAPP. Mr. President——

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Minnesota?

Mr. ALDRICH. Does the Senator want to ask me a question?

Mr. CLAPP. I want to ask a question in all fairness. As I understand, the letter which the Senator is about to read is dated earlier than the letter from Judge Lacombe which has already been presented. Will the Senator give us the date of the letter from which he is about to read?

Mr. ALDRICH. After I have read it I will explain the circumstances under which it was received. The letter is directed to me.

Hon. NELSON W. ALDRICH,
United States Senate, Washington, D. C.

DEAR SIR: We have just learned that a bill has been passed by the House of Representatives, and is now before the committee of which you are chairman, making certain changes in the procedure touching the review of assessments for duty on imported merchandise.

With one provision of the bill only is this court concerned. Had we known sooner that such legislation was in contemplation, we should have furnished your committee and the Committee on Ways and Means of the House with the following information, which would seem to be entitled to consideration before making the particular change in the procedure which is referred to. The bill abolishes appeals from the Board of General Appraisers to the circuit court, and from the circuit court to the circuit court of appeals, and substitutes therefor an appeal direct from the Board of General Appraisers to the circuit court of appeals.

It would seem that the immediate result of the passage of the bill, as now framed, would be very greatly to increase the amount of business to be disposed of by the circuit court of appeals. The consequence might very well be that this court would become so congested as to be unable to dispose of its calendar each year. This we consider a most serious matter, because circuit courts of appeal were originally constituted for the express purpose of disposing in each year of all the appeals which might be taken to them.

We offer for your consideration the following figures:

Appeals heard and disposed of.

OCTOBER.

1898–1899	157
1899–1900	163
1900–1901	156
1901–1902	143
1902–1903	185
1903–1904	199
1904–1905	234
1905–1906	273
1906–1907	285

When the calendar did not present more than 160 cases to be disposed of the circuit judges were able to hold sessions of three weeks for the hearing thereof, with recesses of two weeks between for the disposition of the same. Since the great increase of the past three years the recesses between sessions, during which the opinions have to be written, have necessarily been reduced to one week each. What the result might be if the present calendar of 285 cases were suddenly increased by adding 200 additional appeals it would be difficult to forecast. We remain,

Very respectfully, yours,

E. HENRY LACOMBE.
ALFRED C. COXE.
H. G. WARD.
WALTER C. NOYES.

This letter, it will be seen, was signed not only by Judge Lacombe, but by all of the judges of the circuit court of appeals in New York. The Senator from Minnesota [Mr. CLAPP] seems to think the date of the letter is important. It was dated July 22, 1908, and was written as bearing upon the bill, which passed the House and passed the Senate, providing for direct appeals in these cases. It shows, if it shows anything, that the courts would be congested beyond power of recovery if these additional cases were thrust upon them. I do not know, of course, what brought about the change in Judge Lacombe's opinion.

Mr. BORAH. I think the Senator from Rhode Island inadvertently does Justice Lacombe an injustice, because he is only insisting that the circuit court shall not be cut out, and that these cases shall be sifted through the circuit court before they reach the circuit court of appeals.

Mr. ALDRICH. But all of these cases must ultimately go to the circuit court of appeals.

Mr. BORAH. Not at all, Mr. President.

Mr. ALDRICH. Most of them do go there, as the judge himself says. Under this bill they will not go to the circuit court at all.

I do not know whether we ought to take the volunteered opinions of judges upon these questions or not. I will say that this change in the law was not intended or not proposed to meet the convenience of Judge Lacombe or any other judge. I do not think the volunteered opinions of judges as to what we ought to do in matters of this kind ought to have any very great weight with the Senate.

This provision of law is not recommended for any such purpose. It is to secure the prompt, honest, and uniform administration of our customs laws; and in my judgment, if we can secure this result, it will save the country and save the Govern-

ment of the United States, and save the people of the United States millions of dollars. To my mind all these other questions are minor and unimportant in comparison with the one question as to whether it is possible for Congress to propose an act of legislation which shall secure the uniform, honest, and speedy administration of the laws.

Mr. BORAH. It can not be possible, of course, that the Senator from Rhode Island means that we have had a dishonest administration in the circuit court?

Mr. ALDRICH. I do not say that at all. But I do say that these delays, brought about by the machinations of counsel, have resulted in the end in great loss to the revenue.

Mr. BORAH. If the Senator had had the same experience in the federal courts that I have had, he would agree with me that if there is any place in the world where the machinations of counsel can not prevail, it is in a federal court, because the judges generally control matters there with reference to rules which they themselves make.

Mr. FLINT. I do not think the Senator will agree to that statement as to the question of time. I do not know of any place where postponements are so easily obtained as in the federal courts of the country.

Mr. BORAH. That is a matter which is controlled by the litigants. I do not know of any way by which we can change that except by statute, whatever tribunal we may create. Certainly the federal courts have power to make rules with reference to disposing of the calendar, just as this court would have.

But this all comes back to the proposition I am coming to, and with regard to which I wish to say only a word; that is, that the object and purpose of creating this court is to have a court that will go and get this revenue. That has been frankly conceded. It is to have a court that will interpret this law for the purpose of getting the revenue for the Government. A more solemn, direct, and indefensible impeachment of the judicial system of this country was never heard. Some of us have been defending here for the last week the right to appeal to the Supreme Court of the United States where great questions were involved. It was said that it was improper to do so, because it was thought indelicate to go again to the court after it had once decided a proposition. Now we are told that we should create, not a court, but merely a board, because we want an honest and successful administration of the laws which we enact here.

That means just one thing: That, by the passing of this statute, the circuit court is impeached in either its integrity or its ability to determine the law. There can be no other interpretation.

Mr. FLINT. That is not the interpretation the committee places upon it.

Mr. BORAH. Mr. President——

Mr. FLINT. Pardon me until I finish. We do say that this is a peculiar class of litigation; and that when a court that is hearing and deciding all classes of cases, both equity and law, takes up technical questions relating to the classification of merchandise, it finds itself in a line of work that it does not comprehend. And, in my opinion, the decisions have been such as they would not have been if they had been rendered by courts that had had long experience in this line of cases.

Mr. BORAH. Mr. President, what does the language of the Senator imply—the incapacity or the inability of the federal courts to interpret an ordinary revenue law?

Mr. FLINT. Neither. On the contrary, I think revenue laws of this peculiar class require a court having a great deal of experience and technical knowledge, which can only be gained by a continuance of this class of litigation in one court.

Mr. BORAH. Mr. President, the fact is that for the last five or six years there has been growing up in this country a tendency to regard the federal court as a kind of emergency hospital for defective legislation. In my judgment, this is only another evidence of that tendency. In other words, it has been thought that those who represent the Government stand in a different position in a federal court from that of the ordinary litigants or individuals who come into the court. There has been a tendency and a disposition upon the part of the Government to approach the federal courts by telegrams and letters and private communications, and try cases in that way. I am old-fashioned enough to believe that when the Government goes into court it goes there in precisely the same capacity as an individual, with no different rights, and should expect no different result than a fair and impartial interpretation of the law. If there has been an unfortunate use of language in our statutes, it can be remedied here; but it certainly ought not to be remedied by creating a court which will interpret the law, not as it is written, but as some one supposes it was written.

Mr. CUMMINS. Mr. President, I have a word more to say in response to what has been suggested. I say it in the hope that the question which has been argued so interestingly by the Senator from Maryland [Mr. RAYNER] shall never become material. I really hope it will not reach the conference.

Mr. ALDRICH. The part of the bill which the Senator from Maryland was discussing, and which I was recently discussing, has already been concurred in in the Senate and is not a part of the court amendment at all and has no reference to it in any way.

Mr. CUMMINS. I supposed you were talking about something that concerns the question before the Senate.

Mr. ALDRICH. Not at all.

Mr. CUMMINS. I stated when I made the objection to these sections that this court was to be established because the courts of the United States as now existing had not construed the law to satisfy the Finance Committee of the Senate, and that charge has been abundantly established by the debate that has since occurred. There is no other reason for establishing this court and imposing this burden upon the taxpayers of the United States than that the circuit courts of the United States and the circuit courts of appeals have now and then decided customs cases against the contention of the Government; and in order to secure a court that at least will have a disposition to decide the cases coming before it in harmony with the views of the Government, it is proposed to establish this court of specialists, who, as I said before, will rapidly come to feel that the Government is a preferred suitor, and that the court is to receive from the officers of the Government in some other than the customary way their views with regard to the construction of the tariff law.

I believe that in so establishing it you are dealing a blow to our judicial system the consequences of which it is not easy to determine. In establishing it you are endeavoring to combine a court and an expert; you are endeavoring to combine a board and a judicial tribunal, and that effort will in the end fail, because the people of this country believe in courts that hear before they determine, and hear with an open mind, without regard to the character of the parties before it. I therefore am opposed still more than I was before to the adoption of these sections.

The Senator from Massachusetts [Mr. LODGE] frankly admitted that he expected that this court would save to the Government of the United States $250,000,000 a year. I think he somewhat exaggerated even the work of this court in the construction of the tariff law. But, as I remember, he said that if this court had been in existence during a former year it would have saved in that year to the people of the United States a thousand times its cost. The estimated cost of this court is about $250,000 a year.

Mr. BRISTOW. Mr. President——

The VICE-PRESIDENT. Does the Senator from Iowa yield to the Senator from Kansas?

Mr. CUMMINS. Yes, sir; I do.

Mr. BRISTOW. May I ask if the only way in which the $250,000,000 per annum would be saved would not be to collect that much in additional revenues over what has been previously collected?

Mr. CUMMINS. Obviously.

Mr. BRISTOW. That would therefore mean double the duties that have been collected.

Mr. CUMMINS. Such is the opinion of the senior Senator from Massachusetts—that this court would have the effect of doubling the amount collected at the custom-houses in each year. I do not, however, think that he had reflected very carefully upon that matter before he made the statement, and therefore I will not hold him altogether responsible for it. But it simply intensifies the statement made by the senior Senator from Maine—that we must have a court which, no matter what the importers may claim with regard to the construction of this law, will decide in favor of the Government. That is the position. It is open; it is clear; everybody will understand it.

I do not very much envy the man who holds a judicial place under an institution of that character. He will enter his place, as it seems to me, with a good deal of embarrassment, and he will hold it under a very great handicap, because it may be that you would find when you come to select the members of this tribunal some lawyer who, taking the place, would not agree to construe the tariff law of the United States precisely as the collector would have it construed, or as the chairman of the Finance Committee would have it construed. He might still hold fast to some remnant, at least, of his professional pride. But there is another suggestion. This court is a court of final

jurisdiction. There is no appeal, as I understand it, from the decisions of this court. It is equivalent within its jurisdiction to the Supreme Court of the United States. Its decision upon the constitutionality of any paragraph or any part of this bill might come within its cognizance and would be the decision of the final judicial tribunal of the United States.

I am opposed to it. We have a judiciary now that, taken as a whole throughout the United States, does not work half the time. There I speak with a great deal of knowledge of my own part of the country. If the courts of New York, as now composed, find it difficult to discharge their duties or find it difficult to dispose of the cases which come before them, there is a provision in the statutes already in existence that will authorize the transfer, possibly, of some other judges to that circuit or that district who are not so heavily burdened with judicial duties.

I am opposed to enlarging the federal judiciary, because we have already judges enough to do all the business of the United States, and then they have ample time for summer vacations. More than that, I am not so very much disturbed about the delay. It may be that there is some delay, but am I right in saying that the importer pays the duties as ruled by the collector? That is true, is it not?

Mr. FLINT. It is.

Mr. CUMMINS. Therefore the longer the cases are pending the longer the Government of the United States will be in possession of the money, if it is in possession of it wrongfully. I do not think we need to be very much concerned about speed in suits that are brought to recover from the United States customs paid wrongfully, because if the litigant who wants the money returned to him is willing that there shall be delay, why should we speed—I mean unduly speed—the disposition of such a case?

Mr. FLINT. For the reason that if the importer believed the decision would be in his favor, he would delay the hearing of the case for three or four years, as has been done in many cases, the custom-house broker or the attorney receiving from a third to 50 per cent of what is recovered and the importer receiving the balance, and the merchant pays the additional price during the entire period.

Mr. CUMMINS. That is upon the assumption that the collector has ruled in favor of the Government and that your court will reverse the decision of the collector. You are organizing a court here that is not intended to rule against the Government.

Mr. FLINT. Mr. President, I will not permit that statement to go unchallenged. I say this court is not organized for any purpose other than to carry out the law as enacted by the Congress of the United States, fairly, honestly, justly, and promptly.

Mr. CUMMINS. Mr. President, I shall not attempt to inquire into the motives that actuate the Senator from California. I have never known any but good ones to move him. But I am inquiring into the necessary consequences of the act you are about to perform, the kind of tribunal you are about to establish. The reasons for its establishment have been laid before the Senate by the members of the committee, and those reasons are that you have been disappointed in the decisions of the circuit courts of the United States and the circuit court of appeals. I am opposed to organizing an independent court in order to gratify or relieve disappointment in the past, and I am opposed to doing it because you are adding vast sums to the expenses of the Government.

I give notice now that I intend, when the debate has been brought to an end, to ask for the yeas and nays on the sections.

Mr. BURROWS. Mr. President, I desire to say that this provision in the pending bill now under consideration was not inserted by the committee thoughtlessly or without careful and protracted consideration, and I think the criticisms passed upon the provision and the committee in connection therewith are without justification.

It will be recalled that a year ago the Committee on Finance was authorized by resolution of the Senate to make inquiry in relation to the administration of the customs laws and to ascertain what amendments, if any, were necessary to promote the efficient administration of our customs laws. To that end the chairman of the Committee on Finance, the distinguished Senator from Rhode Island [Mr. ALDRICH], appointed a subcommittee to make inquiry into that subject, consisting of the Senator from Florida [Mr. TALIAFERRO], the Senator from Texas [Mr. BAILEY], the Senator from Mississippi [Mr. MONEY], the Senator from Illinois [Mr. Hopkins], the Senator from New York [Mr. Platt], the Senator from North Dakota [Mr. Hansbrough], and myself.

The subcommittee proceeded to New York and held protracted hearings upon the questions submitted to its jurisdiction, and among the subjects inquired into in connection with the administration of the custom laws was the propriety and necessity for the establishment of a customs court in connection with the collection of custom dues. The members of the Board of Appraisers, who certainly were possessed of the fullest knowledge on the subjects, were requested to appear before the committee and state their views in relation to the establishment of this court. I propose to read from the report of the committee what was said by the Board of Appraisers, they having met as a body and agreed upon the following statement, which was presented to the committee as their mature and deliberate judgment in relation to the matter, from which I propose to read a few extracts. I am confident the reasons assigned by the Board of Appraisers will appeal to the best judgment of the Senate, for to my mind they are comprehensive and complete. They say:

> This bill creates a new court, to be styled "the United States circuit court of customs appeals." It vests jurisdiction in this court of all appeals taken from the Board of United States General Appraisers and provides appeals shall be taken directly to that court from the board. It further vests jurisdiction therein over extraordinary process affecting the customs service. It further contains an itinerant provision in that a single justice thereof may proceed from port to port in the different circuits of the United States, as do the justices of the Supreme Court, for the purpose of hearing argument and other proceedings in customs appeal cases. Its relation to the Supreme Court of the United States is identical with that of other courts of appeal, and is intended to effect a speedy and sound adjudication of all customs appeals and relieve the existing circuit courts and circuit courts of appeal of that class of cases.
>
> The adjudication of the questions affecting a tariff act concerns the raising of as much as $330,000,000 public revenue annually, the prosperity and existence of most of the great industries of the country, and the cost of almost every article of consumption to every citizen of the land. The success or failure of business enterprises constituting the great volume of about $1,500,000,000 of annual foreign importations, the great importing business of the Nation, is also vitally affected by a speedy, fair, and just interpretation of that law. So intimately is the national welfare associated with this law that every reenactment of it witnesses excessive trade disturbances.
>
> As every rate and every phrase of a tariff act are the subject of judicial construction, until such is finally had no tariff act is complete, and until then all affected trades and industries are to an extent unsettled.
>
> While with the country at large the Congress is popularly believed the determinative body of tariff rates and schedules, as a matter of fact the courts and the customs administrative officers finally, in a great number if not great majority of cases, determine these matters. The Dingley tariff law passed Congress in July, 1897. By reason of interpretation and construction of its provisions whole schedules and numerous rates have been greatly changed from the supposed, if not manifest, purpose of Congress. These changes frequently net 10 per cent, 15 per cent, and sometimes greater differences. And at this day—over eleven years after that enactment—there are yet pending for decision questions of equal import, which by reason of the long drawn out road to final appellate decision may yet be delayed a year or years. The Dingley Act to-day is a court-made and not a Congress-made statute which, perforce the slow appellate processes provided, is still undergoing tardy but certain changes.
>
> That administration and judicial construction of a tariff law determine its character has been the history of every such law. The progressive changes in the average rate of duty collected upon dutiable importations under the tariff law of 1897 bear witness to this fact. The average ad valorem rate of duty collected upon dutiable merchandise from 1897 to the close of the fiscal year 1908 is as follows: 1898, 48.80 per cent; 1899, 52.07 per cent; 1900, 49.24 per cent; 1901, 49.64 per cent; 1902, 49.78 per cent; 1903, 49.03 per cent; 1904, 48.78 per cent; 1905, 45.24 per cent; 1906, 44.16 per cent; 1907, 42.55 per cent; 1908, 42.78 per cent.
>
> The duties collected during the fiscal year 1898 included sums collected under the previous tariff act. The highest rate of duty collected under the tariff law of 1897 was during the fiscal year ending June 30, 1899, when the average rate was 52.07, and the least during the fiscal year 1907, when the average rate was 42.55. The average ad valorem rate of duty collected under the Dingley tariff in the year 1908 was nearly 10 per cent below that collected in 1899 and was about that collected in the last full year of the Wilson-Gorman tariff law, to wit, 1897, which was 42.17 per cent ad valorem.

Then the board, speaking of the delays incident to the present method of administration and the hardships in connection therewith, say:

> No practicable scheme or plan for reimbursement to the Government of duties pending litigation over a rate can be devised except the collection of the higher rate during that period. In considering the vices resultant upon delay in ultimate decision of customs appeals, therefore, not the least to be borne in mind is that this higher rate of duty, already held illegal by the first tribunal, must be kept in full force and effect pending final decision, so that this law results and has resulted in the exaction of illegal duties for years and becomes and is an instrument for the defeat of justice and the intent of the Congress by keeping in effect the exaction of illegal rates of duty. Upon final decision these are refunded, in part to the attorney, in part to the broker, and in part to the importer; but there is no refund to the consumer, who, by reason of the maintenance of the higher rate of duty, has been compelled to pay an artificial and illegally exacted price for his merchandise. On behalf of the manufacturer, who profits by this illegal rate of duty, it is advantageous that litigation be prolonged. We may not, therefore, be surprised to find that agents of any who have found this to be advantageous would be strenuously in favor of the maintenance of the present dilatory system of appeals. Of course, should the illegally exacted rate be upon raw material, the result of prolonged litigation might eventually be made the means of driving out of business the manufacturer in this country consuming such material.

Speedy and sound adjudication of these cases is vitally necessary to settle business conditions and just assessment of public revenues. Only three years since—

The board says, speaking of the intolerable delay under the present system of administration:

Only three years ago four and a half years were, on an average, required after the decision by the Board of General Appraisers for the final determination in the circuit courts of appeal of any point of law raised with reference to any provision or rate of the tariff act. Since that time, perforce the dilatory system of law provided, it yet requires two and a half years to settle finally any such question. This is to a large extent by reason of the fact that appeals from the Board of General Appraisers are first prosecuted to the circuit courts and thence to the circuit courts of appeals. Under the amendments of May 27, 1908, a different and, perhaps, slightly more expeditious provision was enacted. This provides that all appeals from decisions of the Board of General Appraisers shall be taken to the United States circuit courts; that thereafter the Government of right, but the importer only on certificate from the judge deciding the case, can appeal to the United States circuit court of appeals. This procedure still invites delay by putting a premium upon it. It is to the interest of both counsel and importer, having lodged the appeal, to delay its determination as long as possible, for each day adds to the accumulated protests on that point, the refunds upon which they divide, while the higher assessed rate of duty enables them to collect the difference from the consumer. Consequently, whatever shortens the life of a customs appeal ratably reduces the number of protests to be handled by the customs officers and board upon that subject. Herein, therefore, is the most practical solution of the vexed problem of reducing the great number of protests now filed. As protests are made on each shipment during an appeal, whatever shortens the time of appeal pro rata lessens the number of protests. The legislation proposed by this bill will reduce the period of final determination of all issues raised concerning the tariff law certainly to within one year, now two and a half years.

The average life of an appeal under the amendments of May 27, 1908, is as yet purely speculative, but experience warrants the statement that where the inclination exists, and it always will where profit is possible, there will, under this amendment, be no perceptible shortening of the average life of customs appeals. In fact some of those interested have publicly declared that the new act would not expedite their causes. While in the appellate procedure some material progress was made by this amendment, the real exigencies have not been met. There yet remains the great diversity of practically final authority. In fact this feature is aggravated, for where final decision was previously ordinarily had in one of nine circuit courts of appeal, such now rests in 9 circuit courts of appeal, 29 circuit judges, 89 district judges, and 9 Supreme Court judges, all of whom are qualified to sit as circuit judges, not to mention the territorial judges and those of the District of Columbia. Already the books contain numerous conflicting decisions of customs cases decided by coordinate circuit courts and circuit courts of appeal sufficient to indicate the probabilities of confusion resulting under this amendment.

Moreover, no warrant of reason seems apparent why a decision by three members of the Board of General Appraisers, checked off in approval by six others, all of whom are lawyers, who for years have been schooled in customs law and practice, who have the witnesses before them to observe their demeanor and conduct, and who are thoroughly schooled in every such case that arises, should be reversed by one circuit judge, who seldom hears a customs case, knows but little about that peculiar law, has no witnesses before him, and whose court is already overcrowded by other causes.

It is the theory of representative government that every official is more or less unconsciously controlled by local education and environment. This is the theory which actuated the fathers in providing representative government that every district and locality might be represented. Senators from different States, Representatives from different districts, are examples; circuit judges who by law must be appointed from residents within the circuit in which they preside; district judges the same; and the personnel of the Supreme Court of the United States, constituted upon the same theory, is of judges who are appointed with reference to their geographical residence. The theory has been vindicated by a century's experiences. The tariff law is one which affects differently different sections of the country; it is a law that affects the whole Nation, and in the interpretation of every rate, paragraph, and schedule of which the whole Nation and every section thereof is vitally concerned. It is a law, therefore, in the determination of which, manifestly, there should be brought representation from the various sections and parties of the country; and its construction, if the theory of our representative government be true, should not be in the main vested in but one of the circuit courts of the United States. At the present time 83 per cent of the customs appeals from decisions of the Board of General Appraisers, which is a representative body appointed from all sections and parties of the country, are decided by the circuit court for the southern district of New York, which is but one of 77 circuit court districts. On appeal from the circuit court the ultimate decision of over 90 per cent of the cases appealed to circuit courts of appeal are decided by the circuit court of appeal for the second circuit, which is made up of judges from the States of New York, Vermont, and Connecticut, principally New York—3 of the 46 States of the Union—and who by law are required to be residents of those States before they are eligible to membership in that court. Either as fact or as precedent these courts decide finally over 85 per cent of the customs cases on appeal, and these precedents control the remaining percentage of such decisions.

It is but fair, just, and right, it is in harmony with representative government, that in the construction of a law in which every decision rendered affects the whole country and every citizen and section of the country, and ofttimes different sections differently, and in which the whole country and every citizen is interested from the standpoints of development, growth, and taxes, should be finally construed by a judicial body drawn from the entire country and not a fractional part thereof. This is true as a matter of governmental principle without the least reflection upon any member of the courts mentioned, all of whom are jurists of well-known learning in the law and profound in their decisions.

Then, speaking of the burdens these cases impose upon the United States court, the board say:

It is a matter of great injustice, however, to those judges and all parties to litigation to thrust these cases upon a court already greatly overburdened with a diversity of causes—civil, criminal, and admiralty. The condition of the files of the United States circuit court for the southern district of New York earnestly demands that they should be relieved of every possible number and class of cases.

Mr. CLARK of Wyoming. Mr. President——

The VICE-PRESIDENT. Will the Senator from Michigan yield to the Senator from Wyoming?

Mr. BURROWS. Certainly.

Mr. CLARK of Wyoming. What is the date of the report?

Mr. BURROWS. The report was made in January, 1909, this year.

The President-elect in various speeches throughout the country has pointed out that one of the most serious governmental problems of the day is the great delay in judicial proceedings and the overburdened condition of court dockets.

Formerly this circuit—

Speaking of the southern circuit of New York—

comprised the districts of Vermont and Connecticut and the northern, southern, and eastern districts of New York. Each district had a single district judge; there was one circuit justice and one circuit judge, making seven in all. In 1887 Judge Lacombe was appointed circuit judge. In 1891, when the circuit court of appeals was established, Judge Shipman was appointed circuit judge. In 1900 the western district of New York was established, and Judge Hazel was appointed district judge. In 1902 a fourth circuit judge (Judge Coxe) was appointed. In 1903 a second district judge (Judge Holt) was appointed in the southern district of New York; and in 1906 a third district judge (Judge Hough) was appointed. So that at present the judges qualified to sit in this circuit and to hear customs cases are 13 in number, including Circuit Justice Peckham of the Supreme Court of the United States. They consist of one circuit justice, four circuit judges, and eight district judges.

Notwithstanding the large personnel of this court and their great industry, as shown by the number of matters disposed of each year, the extraordinary amount of litigation arising within the circuit has resulted in an extraordinary accumulation of pending causes. A bill is now pending in Congress, favorably reported, to increase by one this personnel. The condition of the files in the court and the extraordinary number of causes arising therein would seem to require this court for ordinary cases to consist of an increase of at least one-third in its personnel. Even this in all probability would not be sufficient, for the reason that the judges therein are much overtaxed in their labors and, it is pertinent to add, greatly underpaid. According to the annual report—

And I desire to call the especial attention of the Senator from Iowa to this—

According to the annual report of the Attorney-General for 1908 there were pending July 1, 1908, in the southern district of New York the following number of cases:

Civil cases to which the United States was a party, including 855 customs cases	1,023
Criminal prosecutions to which the United States was a party	180
Bankruptcy cases, voluntary and involuntary	1,419
Other suits, including admiralty	13,826
Total pending and undecided matters July 1, 1908	16,448

This is the report of the Attorney-General.

Mr. BEVERIDGE. Will the Senator permit me just a moment?

Mr. BURROWS. Certainly.

Mr. BEVERIDGE. That statement is exceedingly important. I should like to ask the junior Senator from Iowa [Mr. CUMMINS] or perhaps the Senator from Minnesota [Mr. CLAPP] if those 16,000 cases that are pending before the federal courts, as have been stated here, are of record? I should like to have that explained, because that is the only point thus far I have heard——

Mr. BURROWS. I will read it again. I can only read from the report of the Attorney-General.

Mr. BEVERIDGE. I understand it. I am not questioning it. I would ask the Senator from Minnesota or the Senator from Iowa.

Mr. CLAPP. I had not noticed whether what the Senator was reading relates to the circuit court for the southern district of New York or the appellate circuit court of appeals.

Mr. BURROWS. I will finish reading what the Attorney-General says.

Mr. BEVERIDGE. I see the Senator from Iowa is present.

Mr. BURROWS. The report continues:

There were commenced therein during the last fiscal year:

Civil cases to which the United States was a party, including 424 customs cases	469
Criminal prosecutions to which the United States was a party	191
Bankruptcy cases, voluntary and involuntary	927
Other suits, including admiralty	1,402
Total	2,989

There were terminated during the same period:

Civil cases to which the United States was a party	551
Criminal prosecutions to which the United States was a party	177
Bankruptcy cases, voluntary and involuntary	550
Other suits, including admiralty	986
Total	2,264

Thus it will be seen that of matters pending within said district there were July 1, 1908, 16,448; that during the fiscal year preceding there were disposed of 2,264 matters, as against 2,989 new matters filed.

Mr. BEVERIDGE. What district was that, may I ask the Senator?

Mr. BURROWS. It is the southern district of New York.

Mr. CLARK of Wyoming. Is it not a fact that one judge has been added since that time?

Mr. BURROWS. No; the judges were added before that.

Mr. CLARK of Wyoming. I understood the date the Senator read there——

Mr. BURROWS. In 1887 Judge Lacombe was appointed; in 1891 Judge Shipman was appointed to the circuit court; in 1900 the western district of New York was established.

Mr. CLARK of Wyoming. I want to call the Senator's attention to the fact that an additional judge was provided for at the last session of Congress for the southern district.

Mr. BURROWS. I think one additional judge would not be able to relieve the situation very much as it is shown to exist.

Then the board say:

Of the current business 725 more matters arose therein than were disposed of, which represent the annual addition to the accumulated undisposed-of matters. The ratio is about one-third of that actually disposed of. Given 16,448 matters pending, to which 725 are annually added, we have the figures presented by the report of the Attorney-General of the condition of the business within that district, into which 85 per cent of the customs appeals are thrown for decision under existing law.

In the circuit court of appeals for the second circuit, to which go customs appeals from the circuit court for the southern district of New York, there were pending and undecided on July 1, 1907, 128 matters, and docketed during the fiscal year 1908, 286 matters. There were disposed of during that fiscal year 281 matters, and therefore pending July 1, 1908, 133 matters. If the customs appeals were withdrawn from the circuit court for the southern district of New York and the circuit court of appeals for the second circuit, their already overburdened calendars would be in a measure relieved. In any event appellate cases, many of which involve as to customs appeals hundreds of thousands and at times more than a million dollars, dependent upon intricate points of peculiar law, trade customs, scientific investigation, principles of manufacture, with voluminous records of testimony and far-reaching in their effects upon the commerce and manufactures of the country years to follow, should be determined by specially qualified judges with ample and undisturbed time for deliberate consideration.

The study, construction, and interpretation of customs law, principles, and precedents is one of peculiar technicality, just as much so as probate, admiralty, and other special branches of the law. No man can become proficient in it unless he makes it a specialty. It is of such volume and peculiarity that it requires the whole time, attention, and study of any lawyer, however great his qualifications. Its bearing upon the country and its industries is such that no man can be charged with its adjudication properly the greater portion of whose time is required to be devoted to the construction of other law. Those practicing customs law uniformly, where their business is of any moment, are compelled to devote their entire time to customs law. Yet, under the present system, the appeals on this subject prosecuted from decisions of the Board of General Appraisers are taken into and determined by circuit courts and circuit courts of appeal, presiding in which are judges whose entire time is more than occupied with cases involving other branches of the law, and with which alone most of those courts are greatly overburdened and far behind.

When customs cases are presented in their courts they are exceptional cases. Their calendars are already overcrowded. This is particularly true in that circuit which has the decision of over 83 per cent of the customs appeals—the southern district of New York. Necessarily the United States circuit court for the southern district of New York and the United States circuit court of appeals for the second circuit (New York, Vermont, Connecticut), by reason of the vast population of New York and the numerous controversies therein, are more overburdened with ordinary cases than any other circuit court or circuit court of appeals. Yet these are the courts to which over 83 per cent of customs appeals are prosecuted. Its judges are able, exceedingly industrious, but absolutely overworked by reason of the multiplicity of causes before their courts. The time and attention required by the intrusion of customs appeals upon the attention of these judges can not properly be ascertained by the numerical estimate of appeals, for the reason that where other cases might depend upon the construction of familiar statutes or principles of law, customs cases are peculiar both as to law and fact and require special study and examination for sound decision. In view of the constantly increasing population and litigation in this circuit the probabilities are strong that in the decision of cases other than customs cases alone even greater additions to the personnel of that circuit will have to be made.

Witness the proof of these statements in that there are now pending on appeal from the board in United States circuit courts approximately 820 appeals; in the United States courts of appeal 72 causes. Of these over 600 are pending in the circuit court for the southern district of New York, while the entire 72 in circuit courts of appeal are, with the exception of 12, in the circuit court of appeals for the second (New York) circuit. These involve many duplicated appeals which will be disposed of by one hearing and decision, but present a calendar, nevertheless, which suggests an imposition upon this circuit of cases which should be more ratably distributed throughout the circuits or collected within a single special circuit where constant and exclusive attention could be given such important issues.

A fair estimate of the number of appeals which would be heard by the proposed circuit court of customs appeals may be stated to be from 500 to 1,000, of which from 150 to 250 would involve different and intricate problems of law and fact. This is a sufficient number of cases to be well considered by any court of three judges. The number of appeals per annum for the past four years from the Board of United States General Appraisers is represented by the following tabulated list, which also indicates the moment of such cases.

Year ending June 30—	Circuit court.		Circuit court of appeals.		Supreme Court.	Total.
	Argued.	Not argued.	Argued.	Not argued.		
1905	154	131	36	12	1	334
1906	94	292	50	18	3	457
1907	121	161	44	15	5	346
1908	107	737	56	10	1	911

There are pending at the present time and would be upon enactment of the proposed bill approximately 1,000 appeals from the Board of General Appraisers in the various circuit courts and circuit courts of appeal throughout the United States. Many of these are duplicates, but there are at least 160 separate, distinct, and important litigated issues. The court, then, at organization would be met with this number of cases upon its calendar, and annually arising thereafter at least 500 appeals, of which at least 150 would be subjects of much consideration. In view of the early enactment of a tariff law, it is fair to assume that the number of appeals arising hereafter would be much greater than this. Particularly would this be true in the presence of a court whereat early final decision could be had. The greater expedition given to litigation the greater the desire of the party actually in interest to try out his rights in the court of last resort.

A comparison of the appeals pending in different courts is instructive.

The Supreme Court of the United States, consisting of nine justices, from 1890 to 1908, inclusive, disposed of, on an average, 400 cases per annum. This included decisions upon extraordinary and other process. This would be an average of approximately 45 decisions per justice. The reports of that court show many of these decisions to be rendered without opinion. While it is undoubtedly true that the questions presented to the Supreme Court are much more weighty than those that would be presented to the proposed court, nevertheless many customs cases are finally adjudicated in the Supreme Court, and many of them rank in importance for ahead of the average case decided by the Supreme Court.

The respective United States circuit courts of appeal during the fiscal year ending June 30, 1908, disposed of upon an average less than 135 appeals each. They were as follows: First circuit, 75; second circuit, 281; third circuit, 114; fourth circuit, 52; fifth circuit, 123; sixth circuit, 135; seventh circuit, 87; eighth circuit, 203; ninth circuit, 139; total, 1,209. The reports of the Attorney-General show that this was an extraordinary number of cases decided by those courts, and greater than in any preceding year.

The court of appeals for the District of Columbia, an appellate court of three judges, paid an annual salary of $7,000 each, disposed of the following matters during the years 1902 to 1908, inclusive: 1902, 149; 1903, 131; 1904, 131; 1905, 175; 1906, 176; 1907, 169; 1908, 185.

Then the Board of General Appraisers say further:

It would seem quite as important that a tribunal of the same dignity and standing and comparatively the same expense should be accorded to ultimately determine all appeals in customs cases, many of which involve millions of dollars of refunds from the Government, and each of which involves the substantial rights of the great manufacturing and importing interests of the country, and the ultimate decision of which in numerous instances involves the progress or continuance of some of these great interests. The work afforded the court, therefore, would not only be of the highest order, but sufficient to keep at least three qualified judges busy.

Mr. HALE. Let me ask the Senator a question.

The VICE-PRESIDENT. Does the Senator from Michigan yield to the Senator from Maine?

Mr. BURROWS. Certainly.

Mr. HALE. It has been stated that it is a part of this plan that the court shall be established in Washington, away from the business, away from the custom-house, away from the witnesses, and away from everybody dealing with the subject.

Mr. CUMMINS. May I suggest there——

Mr. HALE. Will not the Senator wait a moment? I find in the amendment the following provision:

The said court shall organize and open for the transaction of business in the city of New York within ninety days after the judges, or a majority of them, shall have qualified.

On page 363 it reads:

The court shall appoint a clerk, whose office shall be in the city of New York, and who shall perform all the ordinary duties of a clerk of the Supreme Court of the United States.

I do not want this matter to pass from the Senate with anybody having the belief that the Senate has agreed to establish this court and take it away from New York, where almost all the business is done, and transfer it to Washington. I ask the Senator, who has taken a great interest in this matter from the beginning, whether he understands that there is any authority, express or implied, for the location of this court away from the city of New York.

Mr. BURROWS. I am very glad the Senator from Maine propounded that question.

Mr. CUMMINS. Mr. President——

The PRESIDING OFFICER (Mr. CURTIS in the chair). Does the Senator from Michigan yield to the Senator from Iowa?

Mr. BURROWS. Allow me first to answer the question of the Senator from Maine.

Mr. CUMMINS. Very well.

Mr. BURROWS. While the question was mooted of having this customs court hold its sessions in Washington, the suggestion was disregarded and rejected at once. On the contrary, provision was made for holding the sessions of the court in New York and others of the great cities for the very purpose of accommodating parties who might be interested.

Mr. HALE. As a member of the committee, I so understood.

Mr. BURROWS. There was no other understanding whatever. Now, I yield to the Senator from Iowa.

Mr. CUMMINS. Mr. President, in the course of my objection to these sections, I mentioned Washington as a proper place in which the sessions of the court might be held. However, I have no preference for Washington. I see a great deal of reason for holding the court in New York. My objection to, and my suggestion with regard to, that phase of the bill was as to the matter of expense. I do not believe in sending this court all over the United States. It does not convenience litigants, because the litigants do not attend the sessions of the court. It might convenience the lawyers, although I doubt very much whether the additional expense involved in sending the court from New York to San Francisco and from the Lakes to the Gulf will be found to much convenience counsel. But am I right in saying this is a court of review or appeal, which hears no testimony?

Mr. BURROWS. The cases and the evidence taken before the General Board of Appraisers are transmitted to the court.

Mr. CUMMINS. Therefore the court can hold its sessions and decide these cases in one place just as well as in another. All that would be involved necessarily would be the travel of lawyers. Inasmuch as I suppose nineteen-twentieths of the cases are along the Atlantic seaboard, it is obvious that the court would be greatly less expensive if the sessions were held there instead of elsewhere.

Mr. BURROWS. That is a matter of administration; that is not a material matter to the one I am discussing—the necessity and importance of this court.

Mr. CUMMINS. May I suggest but one more feature before I close? Then I shall have said all that I have to say. If the judicial force in New York is not large enough to attend to business arising in New York, I should be very glad to vote for whatever increase may be necessary; but my objection is to the peculiar character of the court.

Mr. BURROWS. I suppose the Senator listened to the statement made by the Attorney-General as to the number of cases pending—over a thousand customs cases—and what the board say, that, on an average, it is three and one-half years before these customs cases are decided?

Mr. CUMMINS. That would be no evidence to me that the court was not able to dispose of those cases.

Mr. CLARK of Wyoming. Mr. President——

The PRESIDING OFFICER. Does the Senator from Michigan yield to the Senator from Wyoming?

Mr. BURROWS. I do.

Mr. CLARK of Wyoming. I suppose that the customs cases take their regular place upon the docket and that the customs cases are not any further behind than any other class of litigation.

Mr. BURROWS. No; but the very object of the creation of this court is to establish a tribunal that will take care of customs cases at once and expedite their determination. I will continue with the reading of this statement.

Mr. CLARK of Wyoming. I wish the Senator from Michigan would give us some information as to the necessity of expediting these cases, instead of having them take their regular course.

Mr. BURROWS. I will read further from the report upon that point and in full answer to the Senator's inquiry:

> It would seem quite as important that a tribunal of the same dignity and standing and comparatively the same expense should be accorded to ultimately determine all appeals in customs cases, many of which involve millions of dollars of refunds from the Government, and each of which involves the substantial rights of the great manufacturing and importing interests of the country, and the ultimate decision of which in numerous instances involves the progress or continuance of some of these great interests. The work afforded the court, therefore, would not only be of the highest order, but sufficient to keep at least three qualified judges busy.

I suppose the Senate would be surprised if I should submit here a statement from the Secretary of the Treasury that since the enactment of the Dingley law in 1897 the United States Government has been compelled by erroneous decisions to refund over $18,000,000.

Mr. CLARK of Wyoming. May I ask the Senator from Michigan a question?

The PRESIDING OFFICER. Does the Senator from Michigan yield to the Senator from Wyoming?

Mr. BURROWS. I do.

Mr. CLARK of Wyoming. I ask the Senator from what does the Senator read when he says "erroneous decisions?" When the Senator says "erroneous decisions," does he mean erroneous decisions of the circuit court of the United States?

Mr. BURROWS. I am not advised. I simply have the statement from the Treasury Department of the amount which has been refunded.

Mr. CLARK of Wyoming. I certainly can not conceive that the Secretary of the Treasury would refund money upon any decision that was not correct.

Mr. BURROWS. They were erroneous assessments.

Mr. CLARK of Wyoming. On erroneous assessments. That is very different.

Mr. CUMMINS. That simply proves that that collector was trying to get more money than was coming to the Government.

Mr. BURROWS. He is not administering the law properly.

Mr. CUMMINS. That is true, precisely; the collector of customs is not properly administering the law, and has been requiring the payment of that much more money than was due the Government.

Mr. BURROWS. Since 1897 there has been a refund of over $18,000,000 made necessary by erroneous assessment. The trouble is there is no single tribunal clothed with power to construe these tariff provisions and the result is that the appraisers in one place—in New York, if you please—make one ruling; in Boston another; in San Francisco another; and in Chicago another; so that there is no uniformity of decision whatever, no single guide to correct administration.

Mr. BORAH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Michigan yield to the Senator from Idaho?

Mr. BURROWS. I should like very much to complete the statement in hand.

Mr. BORAH. Very well; I will not interrupt the Senator.

Mr. BURROWS. There has been some criticism touching the expense of this court. Upon this point the board say:

> A calculation of the expense of the proposed court fixes it at approximately $50,000 per annum. This is an insignificant sum compared with the results to be obtained. The time of ultimate decisions in customs cases would be reduced to within one year instead of as at present requiring two and one-half years or more. It would add to the expense of collecting the customs revenues, which, according to the last annual report of the Secretary of the Treasury, was $9,580,626.25 for the fiscal year ending June 30, 1908, such an insignificant sum as could hardly be estimated in percentages. Indeed, no public service can be adequately estimated in dollars and cents. If only that branch of the public service were established, and if only that administration of justice and the laws were provided which, by the performance of its duties, returned in dollars and cents the expense of its constitution, but few would be constituted. The same may be said of the time during which public officers are employed. If offices were not to be created which did not occupy the entire time of the officials, or which did not keep them pressed to their utmost capacity and intelligence and ability, but few offices would be created. The justices of the higher courts, Members of Congress, and other public officials performing the highest duties in public service are not and should not be kept continually at their desks.
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> Objection has been made to the constitution of this court by those interested in the present dilatory system, in that it provides that the justices thereof must be experienced in customs laws and admitted to the Supreme Court of the United States. This is a remarkable criticism.

We have had justices appointed on the Supreme Bench because they were particularly learned in one branch of the law.

> It bespeaks ignorance in the place of intelligence of the particular subject to be decided. The trend of all modern business and professional lines is toward specialism. This principle is observed in the personnel of the greatest courts of the land. Mr. Justice Brown, lately retired from the Supreme Court, was specially appointed to that bench by reason of his extensive knowledge of admiralty law. Mr. Justice White, at present an honorable member of that court, was appointed by reason in part of his special knowledge of civil law. Mr. Justice Lacombe, of the United States circuit court of appeals for the second district and a judge in the southern district of New York, was appointed to that branch especially to decide customs cases by reason of his special knowledge of customs laws.
>
> It is deemed so completely special that customs attorneys practicing before the Board of General Appraisers and the courts in this line practice in no other branches of the law, and few other lawyers care to undertake this class of cases. If it be true that those not skilled in customs law should be appointed judges of customs cases, it would be equally true that those not versed in any law should be appointed judges of general cases, and so on ad infinitum. The result of this proposition reductio ad absurdum is that judges are better qualified by ignorance than intelligence and that laymen and not lawyers should be made judges of our courts.
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> There is a general provision in the bill that the appointees should be admitted to the Supreme Court of the United States. This is a prudent provision, and secures in the personnel of the court the requirement to practice in the Supreme Court, to wit, that they shall have been engaged in general practice of the law in some State of the Union for the period of at least three years. This assures in the personnel of that court general practitioners specially skilled in customs laws. No less qualifications should surround the personnel of any court.
>
> Further criticism is made by parties interested in dilatory proceedings that judges of the general bench are better qualified to decide these cases than those specially skilled in customs laws, as members of the board, who are specially skilled in this line of law. The deci-

sions of the Supreme Court of the United States fail to carry out this contention. Since 1891, 15 appeals were passed upon by the board, the circuit courts, the circuit courts of appeal, and the Supreme Court, and the final decision by the Supreme Court was as follows:

	Board.	Circuit courts.	Circuit courts of appeal.
Affirmed	11	3	5
Reversed	4	7	10

When it is borne in mind that after leaving the board additional testimony was introduced by one side or the other, or both, in the circuit court in most, if not all, of these cases, and that therefore the circuit courts and the circuit courts of appeal passing upon the cases had a complete record, whereas the board had an incomplete record, the record of the board for reversal in the Supreme Court of the United States is remarkable.

A frequent vice of the present system we find in the defeated litigants seeking another circuit to relitigate their cases already decided in the hope of favorable decision, or preferring certain circuits by reason of supposed advantages arising from divergent views taken in earlier decisions. In several instances there are now conflicting decisions on the same point not alone between circuit courts, but also between circuit courts of appeal, which naturally result in the enforcement of different rates of duty at different ports if these decisions are observed by the lower tribunals. The amendment of 1908, as stated, will simply multiply these differences.

The customs administration of this country, excepting its unperfected appellate provisions, is the most perfect in existence, and the vast revenue collected, the almost incalculable value of the interests affected, can well afford the additional expense to perfect this system. The final appellate authority upon customs matters should, by reason of the diversity of subjects and the technicality required for sound decision, be not alone schooled in customs law and practice, but should have ample time to and should study many cases from the standpoints of science, mechanics, and mechanism, as well as history of development and production. The importance of the subjects as bearing upon the interests, directly or indirectly, of every citizen of the country, in more ways than one, demands the most studious and painstaking consideration, and should not be cast by the law as an unimportant increment to an already overcrowded jurisdiction.

This Government, however, is great enough, strong enough, and always abundantly able to pay the expenses of whatever system conduces to the welfare of the public and its best interests as a Nation. As one of its results would be to make certain and complete all litigated rates and provisions of the tariff act in about one-third the time now required, it would seem that the expense involved would be insignificant in comparison with that result alone.

The enactment of this bill should provide a court which would relieve the congested dockets of other courts, unify the decisions on customs appeals, expedite such decisions to one-third of the present required time, and add to the completeness of the most nearly perfect customs system in existence.

Mr. President, this statement of the Board of General Appraisers is so comprehensive and complete that it seems to me nothing can add to its force and completeness. For myself, I can not understand why there should be any objection to the creation of this single tribunal having in charge the construction of our tariff laws, to the end that decisions may be prompt and uniform, thereby securing an efficient administration of our revenue system.

Mr. BORAH. Mr. President, I am going to detain the Senate only a moment, but I want to call attention to one fact, which shows how utterly unreasonable is the argument which has been presented by that committee. To show how much that argument is wrong, the salaries of the judges of that court alone amounted to $50,000.

Mr. BAILEY. Will the Senator from Idaho permit me?

The PRESIDING OFFICER. Does the Senator from Idaho yield to the Senator from Texas?

Mr. BORAH. I do.

Mr. BAILEY. I was a member of that committee, though I did not attend its sessions, being sick at the time; but the bill had not then fixed the salaries. It could not, therefore, be that the salaries were fixed at $50,000 when the report was submitted.

Mr. BORAH. Then, they are making an estimate upon the entire matter, apparently. To show how close their estimate came to the facts upon which we are now called upon to pass, I will state that, as the bill was brought to us, the salaries of the judges amounted to $50,000; that of the clerk to $4,000; the Assistant Attorney-General, $10,000; the deputy assistant attorney to $7,500; 4 attorneys at $6,000 each; the other attorneys at $5,000 each, and stenographers amounting to about $20,000 a year; the assistant clerk at a salary of $2,000; stenographer and clerk at a salary of $2,400; reporter at $2,500 per year; and messenger at $900 per year.

At the time the bill came into the Senate there were $120,000 of salaries in the bill alone. So far as the report of that committee is concerned, it does not throw very much light upon it when we come to vote.

Mr. BURROWS. Will the Senator allow me just a moment?

Mr. BORAH. Yes.

Mr. BURROWS. The statement in regard to $50,000 referred entirely to the members of the court. Nothing was said about the other officers required in the administration of the law. That is all open to amendment.

Mr. BORAH. What they said was that the court would cost about $50,000, as I understand.

Mr. BURROWS. That is, the court itself.

Mr. BORAH. Of course the court is not a court when you simply get the judges. The court itself is costing about $210,000 a year.

Mr. BURROWS. If I may be permitted to do so, I will say that if this court, by the uniformity of decisions, its thorough knowledge of the tariff, and the administration of the tariff, could save the Government from refunding, as it has during the last ten years, $18,000,000, does not the Senator think it would be wise to establish it?

Mr. BORAH. I say again, Mr. President, that can only be upon the theory that the decisions heretofore have been erroneous and have not been in accordance with the law. Certainly the proposed court could not save the Government one dollar if it interprets the decisions in accordance with the law, unless we proceed upon the theory that the other courts have not done so.

Mr. CLARK of Wyoming. Mr. President, I am not concerned with regard to the expense of this proposed court; I am rather concerned with reference to a matter which was hinted at by the Senator from Michigan [Mr. BURROWS], in his last statement, that had this court existed heretofore this $18,000,000 would not have been refunded. I am afraid that is true. The $18,000,000 was refunded under decrees of the United States federal court. It is possibly true that had the United States federal court been deprived of jurisdiction the Government might have held on to $18,000,000 which those courts say was improperly collected, but somebody would have been wronged.

I have a great deal of confidence in expert knowledge; I have a great deal of confidence in the expert knowledge of the Board of General Appraisers; but I dislike very much to see a court established by experts for the purpose of carrying out their especial theories of the law.

I am not very much concerned in regard to the delay in customs cases. I have listened pretty carefully, but as yet I have heard no reason why a customs case should be given a preference over an admiralty case. The customs cases in the southern district of New York take their turn with all the other cases that come before the court. I know of nothing sacred in a customs case that should give it the advantage of expedition over other cases. Nor do I care so much about a particular expert judge for that class of cases. It is well for a judge to know the law; but to say that a judge must be an expert upon every detail of all classes of cases that come before him is asking too much of human knowledge. As well might you say we ought to have a judge who has been nothing but an admiralty lawyer in order to enable him to sit properly in a United States court to try admiralty cases, because the one is as much a specialty as the other.

Mr. BURROWS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Wyoming yield to the Senator from Michigan?

Mr. CLARK of Wyoming. Certainly.

Mr. BURROWS. Is not the Senator aware of the fact that Justice Brown, of my State, was appointed to the Supreme Bench because of his special knowledge of admiralty?

Mr. CLARK of Wyoming. Very well; that may have been. I wish more judges were appointed in that way. I was going to say that I can conceive of the possibility of a President of the United States appointing as a judge in the southern district of New York a man who is specially qualified to pass particularly upon customs cases, but I am fearful of special courts. I believe in the federal judiciary. Mr. President, our judiciary as now constituted is equal to all emergencies; and I should hate to think that a man selected by the President of the United States because he was considered competent from every standpoint, because of his legal mind and of his mature, ripe, and honest judgment, to take a place upon the district bench of the United States was not qualified to pass upon a customs case.

I regret very much, Mr. President, that I am unable to coincide with the committee of the Senate, which has recommended this amendment. I believe they have acted for what they thought was the best; but I believe they have been moved by an undue fear that the customs laws are not rapidly enough being executed and that we should have a court to determine what Congress might have meant instead of interpreting what Congress actually wrote.

Mr. BAILEY. Mr. President, it is inconceivable to me that any Senator could deliberately make up his mind to organize a court for the purpose of perpetrating an injustice; and I can not share the belief expressed by the Senator from Iowa [Mr.

CUMMINS] and the Senator from Idaho [Mr. BORAH] that those who propose this legislation have it in their minds to secure a decision in behalf of the Government without regard to the merits of the case. That is a charge so grave that I would not intimate it against any man in whose patriotism or in whose integrity I had the slightest confidence. I do think that there is a belief on the part of some supporting this measure that the importers have been able to secure decisions favorable to them in cases which the Government ought to have won; but I think that is predicated upon the idea that the judge of a court of general jurisdiction can not, in the nature of things, qualify himself for the apt and speedy decision of this particular class of cases.

I think that any lawyer who has ever examined one of these customs cases would himself despair of being able to decide it. He might even despair of being able to try it intelligently; and, if I might be permitted to say that much, an examination of the record in some cases will disclose that the Government's attorneys have not tried them with very great skill and with very great intelligence. I have no doubt that the Government has lost millions of dollars from time to time because customs cases have not been tried on behalf of the Government with the diligence and skill which their magnitude demands.

But, Mr. President, I support this provision, not because I believe it will insure a decision in behalf of the Government when justice is on the part of the citizen, but because I believe it is so vastly important that there shall be a speedy decision of every question, and, most of all, on questions of taxation, that I would not compel the Government and its suitors to wait at the court-house until the ordinary litigation has been disposed of.

It does not become the dignity of the Government to wait around with its hat in its hand until the ordinary civil and criminal cases have been dispatched. Nor is it proper for a citizen who has been compelled, in order to obtain his goods, to pay what he considers an unfair tax to wait upon the ordinary and the tedious processes of the law until his case against the Government can be decided.

I think the Senator from Iowa [Mr. CUMMINS], who makes so few mistakes in his arguments, will rather regret the statement which he made in reply to some interruption that he was not concerned about securing to the litigant against the Government a speedy disposition of the case, "because," said he, "the Government has the money." That is all true; but if the Government is not entitled to it, the Government ought not to be permitted to keep it one hour longer than the orderly and prompt decision of the case will permit.

I think there is no class of cases about which we should be so deeply concerned, not only for a correct, but for a prompt decision, as customs cases. There are $330,000,000 involved in the customs collections throughout the country; and a large per cent of that amount is collected at the port of New York.

I have no hesitation in saying that it is utterly impossible for the judge of a court of general jurisdiction to qualify himself for the trial of customs cases and still to perform his multitudinous and various duties. If any man believes it is easy to decide these questions of classification on the bench, let him first try to make one of these bills for Congress to pass. We have been here four months. The Senate represents upon the average an ability superior to the bench of the United States; and yet how many Senators, after these four months, would undertake to classify articles under this bill? But when a judge is called upon to decide these questions, they are no less perplexing to him than they are to us.

Nor does it always happen that the lawyers illuminate the subject. The old theory of the bar was that by having a man to present each side of the case, each presenting the truth as it appeared to him, the judge, if the case was tried by a judge, or the jury, if tried by a jury, would be able to evolve out of their contentions the very truth of the matter. But unfortunately the lawyers do not always try to enlighten the court, and a lawyer never feels it incumbent upon him to present the other side of the case.

The result of all this is that sometimes arguments tend rather to confuse than to guide and enlighten the judgment of the court. And so when a judge, turning from a case involving a wholly different proposition, comes to try one of these cases involving a difficult and technical question of classification, he may well despair of being able to decide it promptly and justly, because if he decides it promptly he is liable to decide it wrong, and if he takes the time to decide it properly he can not decide it promptly.

Mr. President, there has been some complaint here that the judgments of this court are to be made final; and I avow my responsibility for that. I believe that in a mere matter of dollars and cents, which can never involve all a man possesses, after it has been passed upon by the appraisers, one day in court is enough, and especially is it enough when it affects the revenues of the Government. But that would not have influenced me entirely. I think, as a general proposition, we have too many appeals in this country. I think that the appeal in this country in many cases amounts almost to a denial of justice, because the prosperous litigant can drag the man of small means through so many courts and so many appeals that in sheer despair the latter frequently compromises or surrenders his rights rather than to follow them through an almost interminable litigation. I rather believe——

Mr. HALE. Mr. President——

The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from Maine?

Mr. BAILEY. Certainly.

Mr. HALE. Let me ask the Senator if this feature of undue delays of the law is not especially applicable now in all the processes relating to questions arising in the collection of customs at the New York City custom-house.

Mr. BAILEY. I understand that to be true.

Mr. HALE. Is not the appeal from the appraiser to the full Board of Appraisers and to the district court and the circuit court and the court of appeals one of the most marked instances of the undue delay of the law that is afforded anywhere in the observation of the Senator?

Mr. BAILEY. I probably would not go quite that far or state it quite so strongly; and yet I am not sure that the Senator from Maine states it too strongly.

I myself rather believe that our ancestors in our mother country have adopted the wiser course about their appeals and the delays of justice. I believe that the best system of justice that could be devised would be one under which a man could bring a suit and get his money under execution within the same year. I believe that any system which delays the final justice of any case beyond twelve months from the institution of the suit is a defective one; and I do not believe it is necessary to have an imperfect justice administered in order to have it promptly administered.

But that was not the consideration which controlled me, and I have no hesitation in stating to the Senate the consideration that did control me, and it was this: The Supreme Court of the United States is to-day overburdened, and if any Senator doubts that, let him read the decisions of that great tribunal. He must conclude, when reading those decisions and comparing them with the decisions of other days, either that the work of the court has increased enormously or else that the intellect of the court has declined in a marked degree. I do not myself believe that the intellect of the court has declined, but I do believe that the work of that court has increased beyond the power of the men who compose it to dispatch it in a proper way. No supreme judge ought ever to be required to read to his brothers an opinion until he has written it and rewritten it until it is letter perfect both in its argument and in its phraseology. Yet I happen to know enough about the habits of the great lawyers who compose that tribunal to know that they work long into the night and then are compelled to say to their brothers they have not been able to give to the preparation of their opinions the time which they required.

Mark you, I make the distinction. I do not say they have not given to the decision of the case—although I think I could say that—the proper time, for I have never heard one of the judges complain that he did not have the time to decide the cases; but I have heard more than one of them admit that they did not have the time to suitably prepare their opinions.

Therefore, on this question of mere dollars and cents involved in the construction of the revenue laws of the country, I do not believe the Supreme Court's work ought to be increased by these appeals when it is already beyond the capacity of the most industrious justices to perform. I wanted to take that away; and while I am on my feet and on the subject I may say that if I had the power I would deprive these District litigants here of the opportunity to carry certain cases to the Supreme Court of the United States. They carry to that great tribunal many ordinary lawsuits transpiring here.

If I had my way, I would first appoint to that tribunal the greatest lawyers in America without reference to their politics, and then I would so limit their jurisdiction that not one of them would ever find it necessary to complain that he was worked beyond either the mental or the physical capacity of a man to do his best work; and I would have every opinion that comes from the pen of a justice and printed in the reports of the Supreme Court of this Republic perfect—as perfect as literary excellence and great ability could make it. That can never happen as long as that court is deluged with the appeals which now go there.

Mr. President, within the last two months that court has delivered an opinion on the commodities clause of the rate law which it were charity to believe was hastily written, because I undertake to say—and on a subsequent occasion I will undertake to prove—that it is the most remarkable deliverance which ever emanated from that tribunal. The court was in such a hurry as to say that the words "mined, manufactured, or produced" were "somewhat redundant."

Of course they were somewhat superabundant if that statute dealt with no case except the very kind of case then at bar. If the statute did not cover and was not intended to cover any except the case of the coal-carrying roads, then they were superabundant, and the word "mined" would have been sufficient. But we must remember that that statute was drawn to cover a multitude of cases, and it would not have covered all of the cases intended either by the man who drew it or by the Congress that passed it if it had not covered manufacturing and productive enterprises as well as mining enterprises. It is strange indeed that the court wrote the opinion in such hurry as to hold that phrase redundant.

Mr. President, I have now in my mind another case where one of the justices, in delivering the opinion, stated as a matter of record what was a matter of brief and a matter which the record itself put in a very different aspect.

I do not complain of that, because what would happen if they permitted their docket to become encumbered to such an extent as it would if they each took ample time to read every record? Lawyers who have had occasion to examine those cases know how voluminous those records are. It seldom happens that a record in a case of any importance is less than a thousand pages, and they are frequently three times that much. When you take all that into consideration, the marvel is that the court has done so well; and for one I never intend so long as I am in this body to see a case go there the effect of which can be measured in mere dollars and cents and which does not involve the Constitution of the United States or some treaty with a foreign country. For that reason I myself insisted upon making the judgment of this tribunal final.

Mr. President, one other word, and I am through. One Senator suggested that if the Government saved this money the effect would be to increase the rate of duty. But that is a mistake, arising from a misapprehension as to the course of business. The way the business is transacted is this: The Government assesses and collects the duty. The importer pays it under protest. He then sells his goods upon the theory that he has paid the higher duty, and the people pay that higher duty. If upon a suit against the collector, or against the Government, as permitted here, he recovers, he takes whatever he recovers out of the Public Treasury and puts it into his private pocket, and the consumers of his goods are not benefited a cent.

If the case could be decided before the goods were taken from the custom-house, then it might be a different thing. But every importer is paying the same duty; and therefore their competition, so far as they compete with each other, is on the basis of the higher duty already paid. Whatever they can recover from the Government is so much gained; and they frequently do recover.

I will not say that they recover unjustly. I am willing to say that every case that has ever been decided by the ordinary federal judge of general jurisdiction has been decided according to his conscience and his knowledge of the law. I have no reason for believing otherwise, and I do not believe otherwise. But I do believe that the better qualified a judge is to exercise the general jurisdiction of a federal court, the less qualified he is to administer justice in this particular kind of a case.

Mr. BORAH. Mr. President——

The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from Idaho?

Mr. BAILEY. I do.

Mr. BORAH. I should like to ask the Senator a question in view of the suggestion he made with regard to my position. It has been repeatedly stated here by the members of the committee that this court would have saved the Government millions of dollars in the past. What I said was that that was either a charge of incompetency against the federal court, or a charge to the effect that this court would decide as the law was intended, regardless of how it was written.

Mr. BAILEY. I understood how carefully the Senator from Idaho guarded that statement, and he did not leave the committee very much room to escape. But I hardly think it can be reduced exactly to that complexion, because the best judge in the world, if without sufficient knowledge, may honestly err, and almost every judge does err when he has insufficient knowledge. The more honest he is the more apt he is to err in acting upon insufficient knowledge.

Mr. ALDRICH. Mr. President——

The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from Rhode Island?

Mr. BAILEY. Certainly.

Mr. ALDRICH. I think the Senator from Texas will agree with me that the decisions in these cases that were perhaps not in accordance with what Congress intended have been the result of insufficient preparation on the part of the representatives of the Government more than anything else.

Mr. BAILEY. That is precisely what I was about to say.

Mr. ALDRICH. That is the point where the Government has been deficient.

Mr. BAILEY. And I wish to say that no one would be more impressed with that than the Senator from Idaho. I have already stated that in many instances the cases were not properly prepared and presented. As a result a judge, having no special knowledge of the subject, found that he was able to receive very little assistance from the Government's attorney, but was able to receive a great deal of assistance in arriving at the other conclusion from the importer's attorney. The importer's attorney is frequently the more astute of the two, and I will state how that happens.

I do not mean to say that because a man draws a salary from the Government, fixed without reference to his service, he is less zealous or less honest than a man whose compensation depends upon his success; but it is true that after a man has served the Government over in New York for four or five years, if he develops a sufficient aptness for the work, the importers tempt him with offers of several times as much compensation outside of the Government as the Government pays him. He consequently resigns his place under the Government, and engages in practice on behalf of the importers. That, in my judgment, is the reason the importer's case has generally been presented with more force and clearness than the Government's.

Mr. BORAH. Mr. President——

The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from Idaho?

Mr. BAILEY. I do.

Mr. BORAH. I only wish to say that if this court is a desirable court, and one that we ought to have, the defense which has been made here for it by the committee itself is, I think, unfortunate.

Mr. BAILEY. I think it is, too, if the Senator wishes my candid opinion. I do not subscribe to the idea that we are going to establish this as a kind of court of errors and corrections against what has happened heretofore. But I do say this, and this is what the committee means, and this much the committee is justified in saying: These cases of the Government, which in themselves only involve perhaps five or ten thousand dollars each, but which become precedents for cases which must be settled in accordance with them that involve half a million dollars, or even more, are not only frequently insufficiently prepared and presented by the government counsel, but have, in my opinion, been tried and disposed of by the court without always having suitable and full knowledge of the facts involved.

Mr. CUMMINS. Mr. President——

The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from Iowa?

Mr. BAILEY. I do.

Mr. CUMMINS. Does not the Senator think it would be possible to supply the Government with counsel in New York with sufficient compensation, without establishing a new court in which to try the cases?

Mr. BAILEY. You could, if you would, give them enough. But you can not induce a gentleman who can make $60,000 a year by practicing law against the Government to continue in the service of the Government for a compensation of six or even ten thousand dollars.

Mr. CUMMINS. Mr. President——

Mr. BAILEY. Let me finish; in just a moment. That is nothing to that lawyer's discredit. A man will come to the Senate and accept the salary of $7,500 when he could go out and make $50,000 or $75,000 elsewhere. A lawyer will give up his private practice to become a judge of even a circuit court of the United States when his practice had been bringing him four times the amount of his salary as a judge. In my opinion, no lawyer who felt himself qualified for the place ever refused to accept a seat on the bench of the Supreme Court of the United States, no matter what his income was. It is said that the position was offered to Mr. Conkling, and he declined. But in that case it was not a question of compensation. As Allen G. Thurman said, he "did not understand the language." He did not feel qualified for the position. His was a great intellect; he was a great scholar, a great statesman; but he was not a great lawyer, and he would not have made a great judge. For

that reason, and for no other reason, Roscoe Conkling declined the position.

Mr. CUMMINS. Mr. President——

The VICE-PRESIDENT. Does the Senator further yield to the Senator from Iowa?

Mr. BAILEY. I do.

Mr. CUMMINS. There will be the same temptation in the paths of the assistant attorneys-general provided for in this bill, will there not?

Mr. BAILEY. That is true.

Mr. CUMMINS. Then, as I understand, it is the view of the Senator from Texas that we ought to supplement the weakness of the lawyer by the special skill and knowledge of the judge. Is that so?

Mr. BAILEY. That is exactly what I mean.

Mr. CUMMINS. I am glad that we have found the real basis of the argument.

Mr. BAILEY. And I say that without reference to whether the court is going to decide for or against the Government. It is immaterial to me how the court decides, provided it decides the case according to the justice of it. Every time the Government sues a citizen without just cause, I want to see the citizen win the suit; and every time a citizen sues the Government without merit in his cause I want to see the Government win the suit. What I desire is a trial for right and justice, without reference to which way the cause goes with respect to the parties.

The Senator from Iowa has divined exactly what was in my mind. Recognizing the impossibility of the Government securing attorneys who will match in skill and zeal the attorneys of the importers, I would create a court that could try and decide the case justly and fairly if there were no lawyers in it.

The Senator from Iowa perfectly understands that nearly all of these customs cases are taken on contingent fees. An importer brings in a cargo and pays the duty exacted. He files a protest and straightway employs a lawyer. It is regarded there as a reputable practice, and I think would be so regarded everywhere. The importer employs a lawyer to reduce that claim to a judgment against the Government. In nine cases out of ten the lawyer's compensation depends upon a recovery. As in all such cases, the recovery is proportioned to the contingency, and the lawyer generally gets a large per cent of the judgment.

Mr. CUMMINS. Mr. President——

The VICE-PRESIDENT. Does the Senator yield?

Mr. BAILEY. Certainly.

Mr. CUMMINS. It surely can not be true that the great lawyers of New York, those who are especially strong before the courts, indulge in the practices thus suggested by the Senator from Texas? I do not know; I ask for information.

Mr. BAILEY. I think what the country regards as great lawyers are occupied with larger affairs. So far as my information goes I have never known one of the leaders of the New York bar to be employed in this kind of customs cases, although in those cases which involve the constitutionality of a tariff law generally the great leaders of the bar are employed.

Mr. CUMMINS. They are not employed on contingent compensation? I should hope that the Government at least would find lawyers capable of confronting the men who habitually accept contingent fees and prolong litigation in order to increase those fees.

Mr. BAILEY. The trouble about it is the Government educates these lawyers first. The Government does not have anybody but a man who is considered qualified for the position when he accepts it. The Government trains him at public expense and out of the Public Treasury for five or six years until he becomes exceedingly proficient in all customs matters. Then he perceives that he can resign his public position and earn five or six times as much as the Government pays him. I do not question his right to do so, nor do I question the propriety of contingent fees. While I have not indulged in it myself as a lawyer, I know some of the best lawyers in the United States, men of high character and standing, men I would not hesitate to make the executors of my will or the guardians of my children, who take contingent fees in any kind of practice. While I have not thought it was exactly the best way to practice law I have no criticism to make against gentlemen who think otherwise.

At any rate the fact remains that the importers have the best talent at the New York bar for this particular kind of practice. In the nature of things the Government can not always be losing its proficient and capable men and replacing them with inexperienced men without being put at a disadvantage in the trial of its cases. If I had the power, I would correct that disadvantage not by giving the Government an advantage over the importer, but by preventing the importer from having an advantage over the Government. I would have the case tried by a court whose sole and only duty it was to know this law from preamble to conclusion, to know every section in it, and men who would in time become as familiar with these classifications as experts could be. It would be their life work; it would be their life business; it would be their highest official duty. A man who is fit to wear the ermine of this Republic once put on this bench would be able to decide every one of these cases according to the very truth and justice of the matter; and he would so decide them, in my opinion, without much reference to the manner in which the lawyers presented their case.

Mr. McCUMBER. Mr. President, I was not a little surprised to find questioned on this floor the motives and purposes that actuated the Committee on Finance in reporting this provision, first to create a court and then to pack that court with appointees from the President and confirmed by the Senate who would be so prejudiced in their official capacity that they would decide every case in favor of the Government as against the other litigants. Inasmuch as that has been the charge on the floor, I think it appropriate in a very few short sentences to say what I believe did actuate the committee and every member of it in presenting this measure.

Mr. President, in the first place, it is not denied that there is great nonuniformity in the present adjudication of these cases. If we have one court that will give us uniform decisions, I do not think any Senator will deny that it will be beneficial to the litigants, beneficial to the importers, to the manufacturers, and to the business men of the country. And to the extent that it will be beneficial there will be one reason for the appointment of this court, and that is one of the reasons.

The second reason is that of efficiency. The law governing the development of the human intellect is such that constant study of a particular question necessarily broadens and expands and intensifies and deepens the mind on that particular subject. Any man who has gone over even the cotton schedule will understand how delicate questions will arise; how complex those questions must necessarily be, and how necessary it will be to have judges who will possess technical knowledge upon that subject; and a technical knowledge can only be obtained by a constant daily study of those questions. For that second reason it was thought best to have a court whose whole attention, whose whole life work, should be given to that particular subject.

Another reason was, it is admitted that we have not as speedy a determination of those questions as we ought to have, and to the extent we will secure a more speedy adjudication of all those cases to that extent will we benefit the Government and benefit the business of the Government.

The Senator from Iowa has considered that this court will necessarily, by reason of its construction, be a court whose decisions will always be biased in favor of the Government.

Mr. CUMMINS. Mr. President——

Mr. McCUMBER. In just one moment. Mr. President, the natural impulse of almost every man is in favor of the individual and against the Government. That natural impulse of human nature takes hold of judges just as strongly as it takes hold of any other man, and the history of adjudication in the United States will verify that statement.

We created some forty years ago a Court of Claims. Can anyone say that that court, which was created to decide questions of claims against the Government of the United States, has been biased in favor of the Government? Can anyone say that every adjudication has not been fair, and if there was a question of doubt usually that doubt has been in favor of the individual as against the Government?

What foundation, therefore, Mr. President, is there for the assumption that the judges who will make up this court will not be such judges as can sit and give justice as between the litigant and the Government of the United States?

Those, Mr. President, were the principal reasons that actuated the committee in reporting in favor of this measure. I am not one of those who will agree that it is going to cost the Government $250,000 for the carrying on of this court. We must admit that much of the expense that will be incurred in this court will be expenses that will be taken away from other courts, outside of the salaries alone. It is a court of review or a court of appeals, whatever you may call it. It takes no original evidence; it acts only upon the question of the construction of the law and the application of that law to the peculiar technical cases that will be brought before it as evidenced by the record that will be sent up. So there will be no great expense outside of the salaries of the judges themselves.

Then another matter which actuated the committee was this: It is a known fact that the officers acting upon the part of the

Government and in behalf of the Government did not have that technical training that the attorneys upon the other side had in their constant litigation of questions of that character. For that reason we provided for an Assistant Attorney-General who should give his entire attention to this business and should become as expert as those whose life work it is in setting aside or in recovering from the Government what has already been paid.

Taking all those matters into consideration, it was thought best for the interests of the Government to have this special court. No thought was ever in the mind of a single one of the committee that we would not have a fair court that would decide these questions properly, and no such idea, I think, was ever intimated by anyone in the discussion of the matter before the committee.

Mr. FLINT, Mr. SMITH of Michigan, and Mr. WARNER addressed the Chair.

Mr. ALDRICH. I hope that we will be able to get a vote on this question.

Mr. WARNER. Mr. President, I wish to make one suggestion which I think the chairman of the committee will readily agree to. I notice that in the cities named for the holding of the customs court 11 cities are named, and in the sixth, seventh, and eighth judicial circuits Chicago alone is named. My suggestion is by amendment to insert as one of the cities for holding this court, the great city of St. Louis.

Mr. ALDRICH. I have no objection.

Mr. WARNER. It is the fifth city in population and one of the first in commercial importance.

Mr. SMITH of Michigan. Mr. President, I desire to include Detroit.

Mr. ALDRICH. In line 23, after the word "Chicago," insert "St. Louis and Detroit," as suggested by the Senator from Michigan [Mr. SMITH]. I hope there will be no objection to the suggestion.

Mr. WARNER. I have no objection to Detroit.

Mr. SMITH of Michigan. No one can have any objection, and I hope it will be unanimous.

Mr. WARNER. But I am a little surprised to have it in the same class with St. Louis.

Mr. SMITH of Michigan. I am a little surprised at that myself in view of the wonderful growth and commercial importance of Detroit, but we can stand it, I think, under the circumstances, and St. Louis should feel greatly honored by our society.

Mr. ALDRICH. It is not in the same class with St. Louis, but in the same class with Chicago.

The VICE-PRESIDENT. The amendment to the amendment will be stated.

Mr. SMITH of Michigan. Mr. President, just a moment. I think the words "circuit shall be held at Detroit" ought to be added as well as the word "Detroit," because that is the only city in the sixth circuit that is especially named.

Mr. ALDRICH. All right. In line 23, after the word "sixth," insert the words "circuit shall be held in the city of Detroit."

Mr. CUMMINS. Mr. President, I rise to a question of order.

The VICE-PRESIDENT. The Senator from Iowa will state his question of order.

Mr. CUMMINS. The point of order is that amendments to the sections are not now in order. I want to have a vote on the sections as they stand. So far as any amendments offered on the floor of the Senate are concerned, I do not want to be debarred if other cities——

Mr. ALDRICH. The Senator from Iowa is mistaken about amendments not being in order.

Mr. CUMMINS. I would ask that Des Moines be added, if amendments are in order.

The VICE-PRESIDENT. The Chair must overrule the point of order. The amendments suggested to the amendment are in order.

Mr. CUMMINS. I understood that the order in which we were acting was the consideration of committee amendments.

Mr. ALDRICH. Amendments made as in Committee of the Whole.

The VICE-PRESIDENT. Amendments reported from the Committee of the Whole.

Mr. ALDRICH. And they are open to amendment in the Senate, unquestionably. They are reserved amendments.

Mr. CUMMINS. I did not so understand the order.

The VICE-PRESIDENT. The Secretary will state the amendment to the amendment.

The SECRETARY. On page 364, on line 23, after the word "sixth," strike out the comma and the words "seventh and eighth circuits, in the city of Chicago" and insert in lieu the following: "circuit, in the city of Detroit; in the seventh circuit, in the city of Chicago; in the eighth circuit, in the city of St. Louis."

The VICE-PRESIDENT. The question is on agreeing to the amendment to the amendment.

The amendment to the amendment was agreed to.

The VICE-PRESIDENT. The Senator from Iowa asks for the yeas and nays.

Mr. FLINT. Before the question is taken, I ask that a letter from Judge Somerville in reference to the customs court and also the report of the Committee on Finance in reference to the court be printed in the RECORD.

The VICE-PRESIDENT. Without objection, that will be done.

The matter referred to is as follows:

BOARD OF UNITED STATES GENERAL APPRAISERS,
New York, May 22, 1909.

Hon. GEORGE W. WICKERSHAM,
United States Attorney-General.

MY DEAR MR. ATTORNEY-GENERAL: Your letter of the 15th instant has been received with inclosures as stated, in which you request an expression of my opinion on the subject embraced in the printed copy of Judge Lacombe's letter to Senator DOLLIVER and other facts bearing on the necessity for the establishment of the proposed customs court of appeals embraced in H. R. 1438, now pending in the Senate of the United States.

I may state that the proposed bill had never been carefully examined by me until the receipt of your letter.

In my opinion the Senate amendment is subject to criticism at least for two defects.

1. The bill fails to provide for any review by the Supreme Court of the decisions of the court. It has a salutary and conservative effect upon the deliberations and decisions of every court to know that its action is subject to review by a superior judicial tribunal empowered to correct its errors, which must occasionally supervene in its judicial deliverances.

I think, if the proposed court is established, the United States Supreme Court should be authorized to review its decisions by certiorari or otherwise in all cases involving the construction or application of the Constitution of the United States, and otherwise, to the extent allowed for the review of the decisions of the circuit court of appeals in section 6 of the act of March 3, 1891. (26 Stat., 826.)

2. I think, moreover, that it will be utterly impracticable to carry out the provision of the Senate amendment on page 44, lines 11 to 16, inclusive, which reads as follows:

"Immediately upon receipt of any record transmitted to said court for determination the clerk thereof shall place the same upon the calendar for hearing and submission; and such calendar shall be called, and all cases thereupon submitted, except for good cause shown, at least once every sixty days."

I suggest, accordingly, that this clause be stricken out, and the following, or some similar provision, be inserted on page 40, between lines 2 and 3:

"The court may designate in its rules of practice, or by its orders duly promulgated, the times and places when and where its sessions shall be held for the submission and hearing of any pending case or cases, where the character of the business or other good reason does not justify holding sessions in any of the places heretofore named, having due regard, as far as possible, to the convenience of the court and of the litigants concerned. All cases shall be submitted and decided with as much promptness as is consistent with justice and equity and a due consideration of the subject involved."

Coming next to your immediate inquiry, I would say that the tabulated figures given in Judge Lacombe's letter are no doubt correct. More time has been given to the consideration of customs cases by the federal courts in this circuit (New York) in the past two years than formerly, but the decisions have been made in the first instance by many different circuit judges, which do not appear to me to be always harmonious. The jurisdiction of the proposed customs court of appeals, however, is designed to extend over the whole of the United States, embracing nine circuits, and is to be considered in a broader aspect than in its relation only to the New York circuit.

The establishment of a customs court of appeals vested with jurisdiction of customs cases throughout the 46 States would, in my judgment, correct two existing evils.

1. It would lead to the more prompt decision of customs cases, without such delay as would cause the accumulation of suspended protests before the Board of United States General Appraisers, awaiting the action of the courts. This has become an aggravated evil with which the board has struggled in vain, often making requests of the circuit court judges to bring the parties to trial in certain pending issues, so as to relieve the suspended files of the board. These cases now number about 63,000, thousands being covered by a single issue of law or fact.

A few years ago a careful computation made by the board showed that the average life of customs cases decided by the circuit court of appeals, second circuit, measured from the date of the board's return of the record to the circuit court to the date of decision by the court of appeals, was four years and eight months. As an average delay, this is manifestly absurd, indicating that some cases must have been 6 or 8 years old. Since then, largely through the efforts of the board to expedite the taking of testimony at circuit, with the cooperation of the Department of Justice, this period has been greatly reduced. The cases decided by the circuit courts of appeals during the past year are shown by computations which I have caused to be made to be slightly more than 2 years old by the same method of reckoning. There has been a corresponding reduction in respect to decisions in the circuit courts. The former period of probably several years has been reduced to about one year and six months. But even this delay I believe to be unnecessary.

The following are a few of many illustrations that might be given of protracted litigation. In some cases the delay was due to bringing of new suits on old issues.

The citron litigation, commenced under the tariff act of 1883, continued under the act of 1890, and, I believe, under the act of 1894. (Levy *v.* Robertson, 38 Fed. Rep., 714, decided April 16, 1889; Hills *v.* Ehrardt, 59 Fed. Rep., 768; United States *v.* Nordlinger, 121 Fed. Rep., 690, decided February 25, 1903.) Thus it took twenty years from the time when the question probably arose to settle this single contro-

versy; and protests that were filed under the three acts were steadily accumulating on the board's files, from the establishment of the board until 1897, when the act of that year was so drawn as to put an end to the question. They were then held in abeyance six years longer to await the termination of the litigation.

The sugar-test case was tried before the board in March, 1899. The record was returned to the circuit court in July of that year. The circuit court decision was not rendered until May, 1903, and the decision of the court above not until June 2, 1904. (United States *v.* Bartram, 131 Fed. Rep., 833.) Certiorari was denied by the Supreme Court December 5, 1904. The importers then made a new case, which was decided by the Supreme Court November 30, 1908. (American Sugar Refining Company *v.* United States, 211 U. S., 155.) This was more than ten years after the initiation of the litigation. In the meantime 10,000 to 12,000 protests reached the board from various ports of the country.

The featherstitch-braid controversy arose and apparently terminated under the tariff act of 1890. (In re Dieckerhoff, 54 Fed. Rep., 161.) It did not arise under the act of 1894, but recommenced under the act of 1897. After several abortive attempts the record was finally completed, and a case was decided in the circuit court for the southern district of New York November 23, 1907. (Baruch *v.* United States, 159 Fed. Rep., 294.) The appeal has just been argued in the circuit court of appeals, after an extraordinary delay in that tribunal, and a decision is expected daily. In the meantime the importers had taken up an obscure appeal in Chicago, which happened to involve in part the same question, and without the realization by the Government as to the importance of the matter considerable testimony was introduced in the circuit court there, an order of affirmance was entered by consent, and the case quietly appealed to the circuit court of appeals, apparently in an effort to get it considered by that court before the less favorable record in the Baruch case would be passed on by the court in New York. Thousands and thousands of protests have been filed on this issue.

2. The second and still greater evil that would be remedied is the irreconcilable conflict between the decisions of the circuit courts of appeals and also the circuit courts in different circuits, which have never found their way to the Supreme Court for correction. Embarrassment often arises as to which of these conflicting decisions should properly be followed by the board in making their rulings. So-called "test cases" frequently involve a small amount of duties in the particular protest decided, while the principle settled permeates a larger number of paragraphs in the tariff act so as in legal effect to involve thousands of dollars of revenue.

It is to be presumed that the same court would make all of its rulings uniform when the same or an analogous principle is involved. In customs cases, especially, I think it is a sound principle that it is more important to have a principle settled so that the commercial community may act on it without the hazard of an error than to reach absolute accuracy in doubtful cases of construction, thus preventing fresh litigation and abolishing the frequent habit of attempting to make new cases in other circuits, involving no sound differentiation, and based on the speculation that a different judge may be persuaded to attain a different conclusion.

Some serious instances of these conflicts are detailed on the accompanying inclosure headed, "Conflicting decisions."

The copy of Judge Lacombe's letter is herewith returned, as requested by you.

In conclusion I will say that you are at liberty to make any use of this you see fit.

Very respectfully,

HENDERSON M. SOMERVILLE,
United States General Appraiser.

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CONFLICTING DECISIONS.

Under the system that is now in force there have been frequent conflicts in decisions of circuit courts of appeals. The objectionable results of this condition have been mitigated in some instances, though not in all, by the Supreme Court by issuing writs of certiorari. Following are some of the details of recent conflicts:

BOTTLE CHARGES.

In this issue the question was whether the cost of bottle fittings—such as corks, labels, caps, etc.—should be included in the dutiable value of the bottles or attributed to their contents. Under the act of 1894 the board held that they should be applied to the bottles. This decision was reversed by the circuit court in South Carolina. (United States *v.* Keane, 84 Fed. Rep., 330.) A subsequent decision by the board following the Keane case was then reversed by the circuit court for the southern district of New York, which overruled the South Carolina court. (West *v.* United States, 119 Fed. Rep., 495.) The Government acquiesced in the decision in the West case. Under the present tariff the importers' interest was in having the opposite construction prevail—that is, that the charges should not be included in the dutiable value of the bottles—and probably 6,000 cases came before the board on this proposition. The board followed the West decision, which, though against the Government under the act of 1894, was in its favor under the act of 1897. The board was affirmed in the circuit court for the southern district of New York. (Leggett *v.* United States, 138 Fed. Rep., 970.) The importers appealed to the circuit court of appeals, second circuit. But when the case was reached it was dismissed by the importers, because in the meantime that court had expressed a view unfavorable to the importers in United States *v.* Dickson (139 Fed. Rep., 251), where the point had come up incidentally; and another appeal was taken and carried before the circuit court of appeals for the first circuit, which rendered a decision in favor of the importers. (Hayes *v.* United States, 150 Fed. Rep., 63.) Thus we have had the South Carolina circuit court overruled by the New York circuit court, and the circuit court of appeals for the second district overruled by the circuit court of appeals for the first circuit; and incidentally it may be remarked that this is but one of several instances where the importers, after winning an issue under one tariff, have under a succeeding tariff successfully maintained the opposite contention, oftentimes in a different circuit, where a new case had been made up.

ZANTE CURRANTS.

The circuit court in California held that the provision for Zante currants in the tariff act of 1894 was generic and not limited to the product of the island of Zante. (In re Wise, 73 Fed. Rep., 183.) The circuit court of appeals for the second circuit subsequently held the contrary, on the basis of a new record. (Hills *v.* United States, 99 Fed. Rep., 264.) The importers won. It is understood that they feared the result of an appeal in the ninth circuit, by reason of the local prejudice due to the interest of currant growers on the Pacific slope, which was supposed to have colored the testimony of the witnesses who testified in the first case, even though no bias were imputed to the court. Four years' delay was caused by this additional litigation.

SILK WOOL PROVISO.

Paragraph 391, tariff act of 1897, relates to "all manufactures" wholly or in chief value of silk, with a proviso that "all manufactures, of which wool is a component material, shall be classified and assessed for duty as manufactures of wool." Judge Townsend, in the circuit court for the southern district of New York, held that this proviso applies only to said paragraph, or at most only to the silk schedule in which it is found. (Slazenger *v.* United States, Fed. Rep., 517.) Judge Lacombe, sitting in the same court, has recently held the same. (Woodruff *v.* United States, T. D. 29645.) The circuit court of appeals for the eighth circuit has held that it extends not only beyond the paragraph in which it is found, but into other schedules. (United States *v.* Scruggs, 156 Fed. Rep., 940.) The circuit court of appeals for the first circuit held that it did not extend beyond that paragraph, observing that "the words 'all manufactures' found in the proviso should be held to be only a repetition of the same words with which the paragraph begins." (United States *v.* Walsh, 154 Fed. Rep., 770.) But the same court has just followed the decision in the eighth circuit in the Scruggs case without explaining its inconsistency further than to observe that in a doubtful case they would follow that decision as a matter of comity, even though not concurring "in all the reasoning of the opinion leading up to the final conclusion." (Ballot *v.* United States, T. D. 29766.) The circuit court of appeals for the second circuit has apparently occupied conflicting positions on the same question. (Rouss *v.* United States, 120 Fed. Rep., 1021; United States *v.* Johnson, 157 Fed. Rep., 754.) Note statement by reporter in latter case.

SAKE.

The circuit court of appeals for the second circuit has held the Japanese beverage known as "sake" to be dutiable as an unenumerated article under section 6, tariff act of 1897. (United States *v.* Nishimiya, 137 Fed. Rep., 396.) The circuit court of appeals for the ninth circuit held that it was dutiable as still wines by similitude. (United States *v.* Komada, 162 Fed. Rep., 465.) As in the Zante currant litigation this conflict was based on a different record. The matter is now pending in the Supreme Court.

STRUNG BEADS.

Beads temporarily strung were held by the circuit court of appeals for the seventh circuit to be dutiable as beads not strung. (United States *v.* Buettner, 133 Fed. Rep., 163.) The contrary was held by the circuit court of appeals for the second circuit in two cases, one decided before and one after the Buettner decision. (In re Steiner, 79 Fed. Rep., 1003; Frankenberg *v.* United States, 146, Fed. Rep., 704.) The Supreme Court affirmed the latter tribunal. (206 U. S., 224.) The first decision of the board on this issue seems to have been in 1891. (G. A. 876; T. D. 11885.) The litigation, persisting through three tariff acts, ended in 1907.

SIMILITUDE.

The circuit court of appeals for the second circuit held that where an importer wishes to rely upon the operation of the similitude clause to bring an unenumerated article under some particular classification, he must say so in his protest. (Hahn *v.* Erhardt, 78 Fed. Rep., 620.) The circuit court of appeals for the third circuit held the contrary without discussing the point. (In re Guggenheim, 112 Fed. Rep., 517.) The Supreme Court refused to grant a writ in the latter case. Subsequently the same question came before the circuit court of appeals for the second circuit, which adhered to its decision in the Hahn case. (United States *v.* Dearberg, 143 Fed. Rep., 472.)

CONTINUOUS-CUSTOMS PRACTICE.

There is a well-established rule that a long-continued customs practice with reference to the dutiability of merchandise is a cogent reason for continuing that practice, especially if it arose under a prior act. The circuit court of appeals for the first circuit has given this rule a paramount position not recognized by other tribunals, stating that it "is of the highest authority and masters all others." (Brennan *v.* United States, 136 Fed. Rep., 743; United States *v.* Proctor, 145 Fed. Rep., 126.) Extreme application of this rule was given where the customs practice had existed for but five years under the present act. (Burditt *v.* United States, 153 Fed. Rep., 67.) Passing over this application of the rule, it is desired to make the point that no other court of equal authority has followed the first circuit more than a very short distance along this path. Numerous cases have arisen elsewhere since decisions cited were rendered, in which the element of continuous-customs practice has been present as strongly as in the Burditt case, and has been urgently brought out on argument. But invariably the decision has been on other grounds. In fact, it seems to be the rule in other courts to apply this principle only in cases of great doubt, when no other determining consideration can be found. Under these circumstances the board is much embarrassed in deciding cases in which there is proof of a uniform assessment for several years. If the rule be given the primacy which was enjoined in the Brennan case and was applied extremely in the Burditt case, the settlement of customs questions would be highly simplified; but, in view of the attitude of other courts, it seems desirable to be much more conservative in that regard, though there is the practical certainty of a reversal in cases appealed to the first circuit, if they contain the element mentioned.

SUFFICIENCY OF PROTEST.

The circuit court of appeals for the seventh circuit departed from a long line of decisions holding that the importer's protest must indicate the statutory provision relied upon. (United States *v.* Shea, 114 Fed. Rep., 38.) In this case merchandise was classified as tissue paper, which should have been classified as paper not especially provided for. The importer's sole contention was that it was classifiable as manufactures of paper. The court held that the protest was sufficient. But two years later the circuit court of appeals for the third circuit followed the earlier rule in two well-considered opinions—United States *v.* Knowles (126 Fed. Rep., 737), United States *v.* Bayersdorfer (126 Fed. Rep., 732). These cases were later followed by the circuit court of appeals for the second circuit. (United States *v.* Fleitmann, 137 Fed. Rep., 476.) The weight of authority thus became definitely established on the side where it had formerly rested, thus relieving what would have been an intolerable situation, for such questions come before the board of appraisers with great frequency.

TEA COVERINGS.

The question of whether certain containers are usual or unusual coverings for tea was given opposite solutions by the circuit court for the

northern district of California and the circuit court for the northern district of Illinois. (Jackson *v.* Siegfried, 126 Fed. Rep., 837; Collector *v.* Jaques, not reported.) The Board of General Appraisers found it difficult to harmonize these decisions in deciding later cases, but finally concluded to follow the California decision in California cases and the Illinois decision in Illinois cases. (G. A. 5298–5299; T. D. 24288–24289.) This is obviously not an entirely satisfactory method of procedure.

Probably many other like cases of conflict could be cited. The foregoing list consists simply of instances that were recalled without reference to digests or similar sources of such information. It is thought that the showing already made is sufficient to establish the fact of frequent important and embarrassing conflicts of decisions among the federal courts in customs cases. In circuit courts they have been much more numerous than among circuit courts of appeals.

Mr. FLINT, from the Committee on Finance, submitted the following report, to accompany H. R. 1438:

The Committee on Finance, to whom was referred the bill (H. R. 1438) entitled "A bill to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," having had the same under consideration, submit the following report on the committee's amendment for the creation of a United States court of customs appeals.

Mr. FLINT. This amendment involves no question of party policy or politics. It may be assumed as true that when a law has been enacted, men of all parties agree that its fair, equitable, and speedy enforcement must meet the approval of all fair-minded men.

This is particularly true with reference to a tariff law. Every provision of such a law affects more or less directly the whole body politic, the great manufacturing and importing interests of the country, as well as the interest of the consumer. Each and all are interested in defining as speedily as possible the precise rate applicable to imported merchandise. The manufacturer is interested, that he may know what protection is afforded. The Government is interested, that it may correctly estimate the probable revenue. The consumer is interested, that the rate of duty he shall pay for merchandise shall be as speedily as possible fixed and determined and that no unlawful tax be exacted of him.

No man can say aught but that a law affecting the whole community and every section of the country should be made certain and definite in its terms as speedily as possible. A tariff law, however, is not fixed and definite in its terms until its various provisions have been finally construed by the administrative officers and the courts. For that reason it becomes of the highest interest to the whole public that when issue has been made affecting any provision, and consequently the rate, of the tariff law, speedy decision should be had.

In a statement made before the Finance Committee, it is said:

Every rate and phrase of a tariff act are the subject of judicial construction, and until such is finally had no tariff act is complete, and until then all affected trades and industries are to an extent unsettled.

While with the country at large the Congress is popularly believed the determinative body of tariff rates and schedules, as a matter of fact, the courts and the customs administrative officers finally, in a great number if not great majority of cases, determine these matters. The Dingley tariff law passed Congress in July, 1897, and by reason of interpretation and construction of its provisions whole schedules and numerous rates have been greatly changed from the supposed, if not manifest, purpose of Congress. These changes frequently net 10 per cent, 15 per cent, and sometimes greater differences. And at this day, over eleven years after that enactment, there are yet pending for decision questions of equal import, which, by reason of the long-drawn-out road to final appellate decision, may yet be delayed a year or years. The Dingley Act, as with all previous tariff laws, to-day is a court-made and not a Congress-made statute, which, perforce the slow appellate processes provided, is still undergoing tardy but certain changes.

That administration and judicial construction of a tariff law determine its character has been the history of every law. The progressive changes in the average rate of duty collected upon dutiable importations under the tariff law of 1897 bear witness to this fact. The average ad valorem rate of duty collected upon dutiable merchandise from 1897 to the close of the fiscal year 1908 is as follows: 1898, 48.80 per cent; 1899, 52.07 per cent; 1900, 49.24 per cent; 1901, 49.64 per cent; 1902, 49.78 per cent; 1903, 49.03 per cent; 1904, 48.78 per cent; 1905, 45.24 per cent; 1906, 44.16 per cent; 1907, 42.55 per cent; 1908, 42.78 per cent.

The duties collected during the fiscal year 1898 included sums collected under the previous tariff act. The highest rate of duty collected under the tariff law of 1897 was during the fiscal year ending June 30, 1899, when the average rate was 52.07, and the least during the fiscal year 1907, when the average rate was 42.55. The average ad valorem rate of duty collected under the Dingley tariff in the year 1908 was nearly 10 per cent below that collected in 1899 and was about that collected in the last full year of the Wilson-Gorman tariff law, to wit, 1897, which was 42.17 per cent ad valorem.

Witness the fact that while this Congress now considers its successor, twelve years after enactment of the Dingley law, the colored-cotton rate is just announced. The result is that for twelve years there has been collected from the consumers of the country a 40 per cent duty where hereafter but 15 and 20 per cent will be collected. It took five years to reach ultimate decision after the point was first raised.

And so it is with numerous other cases still pending in the courts.

In view of the fact, however, that serious opposition has been offered to this bill both in the public press and upon the floor of the Senate, involving severe criticisms of those who have advocated it, it will not be unprofitable to review the history of the situation prompting the Finance Committee to report the amendment in question. It is always better to proceed in the light of a full understanding of the situation demanding attention.

Prior to 1890, during which year the customs administrative act was enacted, all appeals from decisions of collectors of customs as to the rate or amount of duty were heard by the Secretary of the Treasury. Inasmuch as the Secretary of the Treasury was one of the parties to the controversy, the manifest injustice of having the cases decided in that office so appealed to the Congress that what is known as the "customs administrative law" was enacted.

There were further reasons contributing to this enactment: First, the vast number of accumulated protests upon the files of the Treasury Department for decision seriously hampered its proceedings; second, the great delay resulting necessarily from such an accumulation of work upon the officials of the department, causing long delays in the ultimate decision of contested points, made it mandatory that some system be devised for the decision of these protests.

This led to the enactment of the customs administrative law of 1890, which created the Board of General Appraisers and provided a system of appeals from that board to the United States circuit courts, and to the Supreme Court of the United States in defined cases.

At that time circuit courts of appeal had not been created. Since then, in 1891, circuit courts of appeal were established and another intervening review of these cases was added, thereby increasing the possible delays in ultimate decision of these cases, making a total for them of five official reviews.

It may not be amiss for a proper understanding of the situation to comment upon the magnitude of the work thus cast upon the Board of General Appraisers, the first reviewing tribunal.

The work of the board is divided into two branches called "classification" and "reappraisement." Classification cases are questions of law relating to the determination of the rate or amount of duty properly applicable to imported merchandise. Reappraisement cases involve the question of the proper dutiable value of imported merchandise.

The annual number of classification or law cases received at the present time by the Board of General Appraisers far exceeds 50,000 per year. The estimated number which will be received during the fiscal year ending June 30, 1909, is 65,000.

A statement, by years, of the number of such cases arising before the board since its organization is as follows:

1891	50,146
1892	47,615
1893	26,404
1894	19,862
1895	24,150
1896	20,078
1897	14,544
1898	16,969
1899	21,876
1900	22,370
1901	19,789
1902	18,854
1903	29,589
1904	30,210
1905	38,768
1906	40,892
1907	58,443
1908	44,230
1909 [a]	65,000

Under the reappraisement branch the number of protests runs from 4,200 to 6,000 per year, as follows:

1891	2,069
1892	2,025
1893	1,954
1894	1,451
1895	3,645
1896	4,715
1897	3,889
1898	3,464
1899	3,190
1900	2,561
1901	2,317
1902	2,849
1903	3,112
1904	3,128
1905	4,246
1906	4,545
1907	5,638
1908	4,213

The Board of General Appraisers consists of nine members appointed from various sections of the country, no more than five of whom shall belong to the same political party.

The decisions of classification cases involve in many instances extensive research in the sciences, arts, and history of manu-

[a] Estimated.

facture and production of various and numerous articles of imported merchandise.

The decisions in reappraisement cases involve the ascertainment of the foreign market value of imported merchandise at various points throughout the world.

It will readily be understood that a proper performance of the duties upon behalf of the members of the Board of General Appraisers involves an immense amount of work. It may be said, however, to their credit that for the past several years at the close of each fiscal year the board was up with its current work.

The number of separate written decisions handed down by the board in classification cases runs between five and six thousand per annum. While many of these involve the same issue, the number of separate and distinct issues annually decided by the Board of General Appraisers averages about 3,000.

The number of findings in reappraisement or value cases, being the determination of foreign market value of merchandise, average about 5,000 per annum.

Reappraisement cases are first heard by a single general appraiser. An appeal is provided from his decision to a board of three general appraisers. The decision of the board of three in such cases is made final by statute, and there is no appeal to the courts from their decision.

In classification or law cases all decisions must be by a board of three. For this purpose the board of nine general appraisers is divided into three coordinate boards of three each. Under a rule of the board, authorized by the law, each decision of the board of three involving a new point must be approved by all the other members of the general board present. If two members of another board check "No," the case is thrown into the board of nine for ultimate decision.

The appeals in classification cases formerly provided by law were, first, from the board of three to the United States circuit court having jurisdiction at the port where the appeal arose; thence to the circuit court of appeals of the same jurisdiction; and thence, in certain instances, by review on certiorari or appeal to the Supreme Court of the United States.

Until May 27, 1908, it was provided by the law that on appeal from the board to the circuit court additional testimony could be taken. This provision of the law was originally intended as a safeguard in the nature of a new trial in case of evidence discovered subsequent to the decision of the board. It soon became the practice, however, in the trial of these cases, for reasons which I will give later, to submit only sufficient testimony before the board to satisfy the statute that the testimony above was "additional" testimony, as provided by the law, and subsequently to take the main portion of the testimony in the court above. This latitude afforded by the law became so much abused that in recent years more than one-half of the testimony in customs cases was taken in the United States circuit courts. Under this practice it became the interest of the protestant that only sufficient testimony should be offered before the board that the case could be decided, relying upon the introduction of his testimony in the court above. It more than often became the policy of the importer to submit only such evidence as would preserve the right to make his case above, preferring that the case be decided adversely below.

Thus, what Congress intended should be a provision to remedy possible error in the board was made the instrument of error and delay in decisions. In numerous and important cases the board, for lack of legal power, became but an instrument of delay under the law, there being no intention to submit all the evidence before the board to afford them the opportunity to find on all the facts. This practice was so much indulged that severe criticism was made of it in many instances. Thus, in the case of United States *v.* Hempstead (159 Fed. Rep., 290), Judge Holland stated:

> This is another illustration of the faulty procedure in this class of cases in permitting the parties objecting to partially present their case before the Board of General Appraisers and, after losing it there, then wakening up to the necessity of properly presenting it and producing the evidence before the court which could have as easily been submitted to the Board of General Appraisers. If this case had been presented to the board upon the evidence submitted here, and the classification urged under paragraph 398 of the tariff act of 1897 as surface-coated paper printed, "dutiable at 3 cents per pound and 20 per cent ad valorem," the board in all probability would have sustained the collector; but the contention was made that decalcomania was not properly assessed under paragraph 398 or paragraph 400, as claimed by the importer, but that it was dutiable at the rate of 45 per cent ad valorem as manufactures of metal under the provisions of paragraph 193 of the tariff act. This proposition, as stated in the opinion of the board, "is utterly groundless and upon principle must be rejected." It was rejected by the board; and decalcomania was held to be dutiable under paragraph 400 as "printed matter," whether it could be regarded as lithographic prints or not. The additional testimony, subsequently taken and now before the court, however, clearly establishes that decalcomania is an entirely different article of merchandise from lithographic prints or printed matter. It is a distinct article of commerce, differing from lithographic prints and printed matter both in manufacture and use.

The following is a list of a few cases where this practice was commented upon by the courts and expressly resulted in reversals of the board's decisions:

Hillhouse *v.* United States (152 Fed. Rep., 163; T. D. 27831), circuit court of appeals, second circuit: The Board of General Appraisers disposed of this claim by finding that there was not satisfactory proof that the machine had been used abroad for a year. This defect of proof was supplied in the circuit. * * * The decision is reversed.

United States *v.* Thurnauer (152 Fed. Rep., 660; T. D. 27857), circuit court, southern district of New York, Hazel, district judge: * * * The board sustained the protest. * * * The proofs given in this court show that, etc. The decision of the board is therefore reversed.

Nash *v.* United States (152 Fed. Rep., 573; T. D. 27875), circuit court, southern district of New York, Hazel, district judge: The testimony given in this court and which was not before the board indicates, etc. The decision of the board is reversed.

Mendelson *v.* United States (154 Fed. Rep., 33; T. D. 27898), circuit court of appeals, second circuit: In the case at bar, however, the importer did appear (before the board) and offered evidence, which the board found not satisfactory; it consisted merely of an affidavit made by a person in China. We are of the opinion, therefore, that the evidence taken in the circuit court was properly in the record and should be considered. * * * The decision of the circuit court is reversed.

NOTE.—The circuit court had affirmed the board, declining to consider the additional evidence taken after the case had been appealed. The testimony taken before the board, an affidavit, consisted of 4 folios, that in the circuit court of 128 folios.

Hesse *v.* United States (154 Fed. Rep., 171; T. D. 27980), circuit court, southern district of New York, Hough, district judge: * * * The testimony which has prevailed before the Board of Appraisers is that the goods are known as "Renaissance collars." * * * I conclude from the evidence introduced in this court that they are not "Renaissance." * * * The decision of the general appraisers must be reversed.

United States *v.* Herrmann (154 Fed. Rep., 196; T. D. 27981), circuit court of appeals, second circuit: The decision of the board was reversed on the basis of additional evidence introduced in the circuit court. No evidence whatever was taken before the board.

Schall *v.* United States (154 Fed. Rep., 1005; T. D. 27985), circuit court of appeals, second circuit: The decision of the board was reversed. Considerable additional testimony was taken in the circuit court.

Kuttroff *v.* United States (154 Fed. Rep., 1004; T. D. 28003), circuit court of appeals, second circuit: The decision of the board was reversed. Seven folios of testimony were taken before the board and 391 before the circuit court.

Boker *v.* United States (154 Fed. Rep., 174; T. D. 28005), circuit court, southern district of New York, Hough, district judge: * * * The general appraisers have upheld the collector. * * * Much additional testimony has been taken in this court. * * * The protest is sustained.

United States *v.* Hempstead (153 Fed. Rep., 483; T. D. 28076), circuit court, eastern district of Pennsylvania, McPherson, district judge: * * * Further testimony having been taken under the order of the circuit court, this, with the testimony that was before the board, has been duly considered. * * * I * * * base my conclusions solely upon the testimony that was taken in the regular way before the board and under the order of the circuit court. * * * The decision of the Board of General Appraisers is reversed.

United States *v.* Colby (153 Fed. Rep., 883; T. D. 28078), circuit court of appeals, second circuit: The decision of the board was reversed. Thirty-eight folios of testimony were taken at circuit, additional to 165 taken before the board.

La Manna *v.* United States (154 Fed. Rep., 955; T. D. 28187), circuit court, southern district of New York. The board was reversed, presumably on the basis of additional evidence taken at circuit.

Vantine *v.* United States (155 Fed. Rep., 149; T. D. 28188), circuit court, southern district of New York, Platt, district judge: * * * The evidence before the board, coupled with that taken in court, etc. * * * The decision of the Board of General Appraisers is reversed.

NOTE.—One hundred and eighty-two folios of testimony were taken at circuit.

United States *v.* Bestard (T. D. 28234), district court, district of Porto Rico, Rodey, district judge: * * * A hearing was had in open court, the evidence of the witnesses taken. * * * Having examined the samples and heard the evidence, as intimated, we are of opinion that * * * the decision of the Board of General Appraisers should be reversed.

NOTE.—No evidence whatever had been taken before the board.

Davies *v.* United States (T. D. 28238), circuit court, eastern district of Louisiana: The board was reversed. Nine folios of testimony had been taken before the board and 46 before the court.

Bassett *v.* United States (154 Fed. Rep., 681; T. D. 28279), circuit court, eastern district of Pennsylvania, Holland, district judge: * * * On appeal to this court further testimony was taken. * * * The decision of the Board of General Appraisers should be overruled.

Wyman *v.* United States (T. D. 28210), circuit court, eastern district of Missouri: The decision of the board was reversed; additional evidence was taken in court.

United States *v.* Lorsch (158 Fed Rep., 398; T. D. 28513), circuit court of appeals, second circuit: Board reversed; additional testimony taken in court.

Crawford *v.* United States (T. D. 28539), circuit court, southern district of New York: Board reversed; additional testimony taken in court.

Dudley *v.* United States (153 Fed. Rep., 881; T. D. 28052), circuit court of appeals, second district: Board reversed; additional testimony taken in court.

United States *v.* Villari (T. D. 28654), circuit court of appeals, second circuit: Board reversed; 57 folios of evidence taken before board and 72 before court.

Benson *v.* United States (T. D. 28656), circuit court of appeals, seventh circuit: Board reversed in part; additional evidence taken in court.

Bockmann *v.* United States (T. D. 28784), circuit court of appeals, second circuit: Board reversed; additional evidence taken in court.

United States *v.* Hempstead (T. D. 28820), circuit court, eastern district of Pennsylvania, Holland, district judge: * * * This case is another illustration of the faulty procedure in this class of cases in permitting the parties objecting to partially present their cases before the Board of General Appraisers, and, after losing it there, then wakening up to the necessity of properly presenting it and producing the evidence before the court which could have as easily been submitted to the Board of General Appraisers. If this case had been presented to the board upon the evidence submitted here, * * * the board, in all probability, would have sustained the collector. * * * The additional testimony, subsequently taken and now before the court, however, clearly establishes that decalcomania is an entirely different article from lithographic prints or printed matter. * * * The decision of the Board of General Appraisers is reversed.

Wood *v.* United States (T. D. 28893), circuit court, district of Massachusetts, Colt, circuit judge: * * * Since this decision by the Board of General Appraisers additional testimony has been taken before a referee appointed by this court. * * * This additional testimony established beyond any doubt that the article is commercially known as "cotton waste." * * * The decision of the Board of General Appraisers is reversed.

Wyman *v.* United States (T. D. 28924), circuit court, eastern district of Missouri: Board reversed; additional testimony taken in court.

This system continued until May, 1908. Congress at that time enacted a law providing that all testimony in customs cases should be taken before the Board of General Appraisers, and that appeal to the circuit courts should be upon the record. The right to grant a new trial within thirty days was vested in the board.

Where the Board of General Appraisers previously had no plenary power for the summoning of witnesses, power was granted by the statute of that year.

For many years prior to that time, after appeal of these cases to the circuit courts, great delay was had in the taking of the testimony. The law provided that this testimony should be taken before a United States general appraiser as referee, but no provision was made whereby expedition could be had in the taking of the testimony. Consequently, until recently the length of an appeal from the time it left the Board of General Appraisers until it was finally decided by the United States circuit court of appeals was on an average four and one-half years, and five and six years for review by the Supreme Court.

It is the practice, under a Treasury order, when an issue is made before the Board of General Appraisers and an appeal taken to the circuit court, that all similar cases are put upon what is known as the "suspended files" of the board in order to await ultimate decision in the courts above, whereupon these cases are taken down and decided in accordance with the ultimate decision.

The number of these cases accumulating upon the suspended files became so great that the number of issues upon which cases could be decided by the board were becoming so few that imminent danger was presented that almost all protests coming before the board would be compelled to go on the suspended files to await final decision.

In order to relieve these threatening and congested conditions, the Board of General Appraisers established a referee's docket. By this is meant that the General Appraisers, sitting as referees, established a docket of all cases in which orders for additional testimony had been granted by the circuit courts, and proceeded to set these cases down for hearing. This resulted in much earlier completion of such records for trial and greatly expedited the decision of appeals, with the result that the average time of an appeal to the circuit courts was reduced from four and one-half to two and one-half years.

The legal right of the board to control the completion of such records was for a long time questioned, and its action criticised as an unwarranted interference with the progress of cases after decision. That controversy had not been completely settled in 1908.

In relief of this condition, and for the purpose of further reducing the length of time of ultimate decision of these cases, Congress, in May, 1908, enacted the law requiring that all testimony should be exhausted before the Board of General Appraisers, and that appeal must be had upon the record alone. That is the system in force to-day.

The ordinary transit, therefore, of protests from the time of filing until ultimate decision is as follows:

When filed with the collector it is reviewed by him, and if not sustained is forwarded with all the papers in the case to the Board of General Appraisers for decision. If that decision is unsatisfactory, it is then appealed to the United States circuit court for decision. If that decision is unsatisfactory, it may be appealed to the circuit court of appeals. This right is vested by law in the Government and permission in the importer.

In cases decided since that act went into effect importers' appeals have been taken as a matter of right, and while that right has not as yet been questioned, the undoubted course will be to allow them with the same liberality as before, unless in specific instances affirmative contrary reasons exist. Such is the usual construction of all such statutes. Any court would be slow to deny a legal right of appeal from its own decision, particularly where the other party has that right absolutely.

If the decision of the circuit court of appeals is unsatisfactory, there is right of review by certiorari from, or in proper cases appeal to, the Supreme Court of the United States.

In all cases appeals must be taken to the circuit court having jurisdiction of the port whereat the protest is filed.

It will thus be seen that the protest against a rate of duty levied is, under existing law, reviewed, first, by the collector; second, by the Board of General Appraisers; third, by a United States circuit judge; fourth, by the circuit court of appeals; and, fifth, by the Supreme Court of the United States.

The natural transit of a protest through these five respective points of review consumes on an average at present two and one-half years for decision in the circuit court of appeals, and three and one-half to four years where taken to the Supreme Court of the United States. While this is the average time, the more important cases consume three and four years and oftentimes longer.

It can be readily understood that in view of such an unnecessary number of reviews great delay must necessarily follow. This involves no criticism upon the courts or officials, but it is the vice of the law providing such a long system of review and such an unnecessary number of reviews.

Meanwhile under the necessary procedure the rate of duty originally levied by the collector, which is necessarily the high rate, remains in full force and effect, and affects all the merchandise of that class and to that extent increases the price which is paid for the same by the consumer of the country. If the importer is successful, the consumer receives no benefit from it. He has paid for his goods to the importer the increased amount effected by the increased rate; but when the refunds are paid by the Government in case of success, they are divided under the present system between the counsel for the importer, the broker, and the importer.

Almost all of these cases are taken upon contingent fees, dependent upon ultimate success, the fruits of which are divided between the counsel for the importer, his broker, and the importer.

Ever bearing this fact in mind, it will be found the source of almost all the opposition to this measure. This amendment means the reduction of these contingent fees and refunds, amounting to an average of over a million dollars a year, to at most one-third of that sum. Over this cause there has for years been waged a controversy between government officials on the one side, pressing for expeditious administration of the law, and the beneficiaries of these refunds on the other side, offering strenuous opposition.

In view of the fact that a protest is filed upon every importation of such goods into this country, the reason is at once seen why it is to the interests of all these parties under the present system to delay decision as long as possible, and it explains why under the present system loud protest is made against any procedure which purposes shortening the length of time for ultimate decision of these appeals. The importer does not suffer; in fact, he profits, because he collects the additional duty out of the consumer. The attorney and broker both share in these refunds, so it is to their great financial advantage to prolong as much as possible ultimate decision of these cases.

It is the view of the committee that the number of appeals provided in such cases is unnecessary, and that the collection of an excessive rate of duty from the consumer, which is necessary pending these appeals, should not be continued any longer than essential for the proper consideration of the law and facts.

It is the opinion of the committee that there is no warrant for opposition to this bill further than that which lies in the interest in the refunds that are afforded in case of success. The present dilatory procedure profits nobody but the parties mentioned, chiefly the counsel for the importer; next in interest to him, the broker; and, lastly, the importer.

Every dollar collected upon importations after a proper length of time for any of these issues to be decided is a dollar unjustly collected out of the consumers of the country for the benefit of the parties mentioned, and the maintenance by the Congress of the present dilatory system of appeals is simply the maintenance of a system of law which enables one class of persons to collect out of the pockets of another class of persons large sums of money each year without any justification and in many cases without any authority of law.

It is not surprising that representatives of certain manufacturing interests are particularly anxious for the continuance of the old system. The Senate has been flooded with copies of

a certain paper conducted by such. The reason is that when a rate of duty is held illegal by the board, its continuance can be maintained for years by keeping alive and nursing along that appeal. The unscrupulous manufacturer or his representative has here, then, in this delay a sure defeat for the board's decisions and method for the maintenance of an illegal rate of duty if he knows the trick.

The maintenance of this system of appeals, therefore, at once becomes the instrumentality for the long-continued exaction of an illegal rate of duty, and constitutes the Government a party to and bureau for the collection of illegal duties from the consumers of the country as a reward to be paid to a certain few for their interference with and delay of the procedure of the Government in the collection of its revenues.

A review of a few of these cases will give the Senate an idea of the possibilities of delay under the system of appeals in customs cases now existing. It will show that while the average life of an appeal has been from two and one-half to four and one-half years, in important cases, involving great amounts of money, the present system permits of delays extending over periods of time of from five to twenty years, and that it is no uncommon thing to string along these cases for a period of ten or twelve years, thus accumulating vast sums in the shape of possible refunds collected out of the consumers of the country.

PROTRACTED LITIGATION IN CUSTOMS CASES.

CANDIED CITRON.

This issue arose under the tariff act of 1883 and was continued through the tariffs of 1890 and 1894. Just how early in the life of the act of 1883 the litigation commenced does not appear, but it was first tried in the United States circuit court in New York April 16, 1889. (Levy *v.* Robertson, 38 Fed. Rep., 714.) This decision was against the importers. They prepared another case, which was decided October 10, 1893. (Hills *v.* Erhardt, 59 Fed. Rep., 768.) They lost this case also. In the meantime the Board of General Appraisers had been established, and the litigation was recommenced before the board. The board made several decisions adverse to the importers, and appeals were taken to the circuit court in New York. Orders for further evidence were entered and kept open until the act of 1894 had been repealed by the Dingley tariff, and there was no longer any possibility of accumulating further possible refunds. Finally, in February, 1902, the further evidence was completed. The case was then argued in the circuit court and decided May 9, 1902. (Nordlinger *v.* United States, 115 Fed. Rep., 828.) The decision was in favor of the importers, but the Government prevailed on appeal to the circuit court of appeals, second circuit. (United States *v.* Nordlinger, 121 Fed. Rep., 691.) The importers' application for writ of certiorari was denied by the Supreme Court December 21, 1903. The last published decision by the board seems to have been January 28, 1904. This litigation involved an unusually large sum of money, probably not less than a million dollars, and, as will be seen from the foregoing, had a history of more than twenty years from its probable inception to its termination.

VALUE OF RUPEE.

The question was whether the Indian rupee should be converted into American currency on the basis of its exchange or its coin value. The question arose under the act of 1894 and continued under the act of 1897. The first case decided by the board related to an entry made March 9, 1896. Protest was filed by the importers July 23, 1896. It was received by the board September 10, 1896, and was decided by the board January 9, 1897, favorably to the importers. Decision not reported. It was decided in the circuit court January 7, 1899. (United States *v.* Newhall, 91 Fed. Rep., 525.) No appeal was taken by the Government, but further proceedings were begun before the board. A new case was prepared, which was appealed to the circuit court of appeals for the first circuit and the Government again lost. (United States *v.* Beebe, 106 Fed. Rep., 75.) A third case was then prepared by the Government, and the decision of the board was affirmed by the circuit court in Baltimore and by the circuit court of appeals of the fourth circuit. (United States *v.* Whitridge, 199 Fed. Rep., 33.) Although the Supreme Court had previously denied a writ of certiorari in the Beebe case, they granted such a writ in the Whitridge case. A decision in favor of the Government was rendered February 27, 1905, nearly nine years after the initiation of the litigation. (United States *v.* Whitridge, 197 U. S., 135.) Several million dollars were at stake in this case.

SUGAR TEST.

The importers contended that the method of ascertaining the polariscopic test of sugar under the tariff act of 1897 as prescribed by the Secretary of the Treasury was illegal. The subject of litigation was an entry of January 6, 1898. The importers filed a protest March 5, 1898, which reached the board on the 22d idem. After careful hearing by the board a decision was rendered March 11, 1899, adversely to the importers. (G. A. 4686; T. D. 22123.) An appeal was taken by the importers to the circuit court in New York.

There ensued several years' delay to enable further testimony to be taken at circuit, and the case was not decided there until May, 1903, the Board of General Appraisers being reversed. On appeal by the Government to the circuit court of appeals, second circuit, that tribunal reversed the circuit court and affirmed the board. (United States *v.* Bartram, 131 Fed. Rep., 833; T. D. 25395.) This decision was rendered June 2, 1904. A writ of certiorari was denied by the Supreme Court December 5, 1904. The importers then recommended litigation before the board, aiming to take the case on appeal directly from the circuit court to the Supreme Court, on the theory that a constitutional question was involved. These further proceedings consumed four years more. The case reached its final stage November 30, 1908, when the Supreme Court dismissed the appeal for want of jurisdiction. (American Sugar Refining Company *v.* United States, 211 U. S., 155; T. D. 29411.) The litigation on this question thus endured nearly eleven years. At least $6,000,000 were involved in this case.

SAKE.

October 4, 1894, the Board of General Appraisers held that sake was dutiable as still wine by similitude under the tariff act of 1890. (G. A. 2786; T. D. 15392.) That case related to an importation at Honolulu made April 21, 1894, on which the importers filed a protest June 4, 1894, which was received by the board July 3, 1894. This decision was accepted by all concerned until April, 1902, when, under the tariff of 1897, an importation was made which the importers contended was subject to duty as beer or as an unenumerated article. After extended consideration by the board a decision was rendered against the importers April 29, 1903. (G. A. 5334; T. D. 24410.) No appeal was taken from this decision, because it was desired to have the matter passed upon by the courts in the second circuit.

A test importation was therefore made within that jurisdiction and an appeal taken from the decision of the board made on that importation. The board was reversed by the circuit court in New York and by the circuit court of appeals, second circuit, March 3, 1905. (United States *v.* Nishiniya, 137 Fed. Rep., 396; T. D. 26155.) This decision was against the Government. A new case was then brought in the ninth circuit. Exhaustive hearings were held by the board, testimony being taken at several ports, including Honolulu. On the record thus made up the importers prevailed in the circuit court in San Francisco, but were defeated in the circuit court of appeals, ninth circuit. (United States *v.* Komada, 162 Fed. Rep., 465; T. D. 29104.) This decision was rendered May 18, 1908. The Supreme Court has since granted a writ of certiorari, and the case is now pending before that tribunal and has been set for argument in October, 1909. Nearly seven years have been consumed in litigating this question under the present act, not to mention the litigation under the act of 1890. The board is holding in abeyance over 4,000 protests which have accumulated on this issue, and if the importers win this case more than a million dollars will be refunded.

GRANITE MONUMENTS.

This question arose under the act of 1897 on an importation entered August 19, 1904. A protest was filed October 7, which reached the board November 2, 1904, and was decided by the board favorably to the Government April 28, 1905. (G. A. 6026; T. D. 26334.) An appeal from this decision was taken through to the circuit court of appeals, second circuit, and was there decided adversely to the importers December 20, 1906. (Baldwin *v.* United States, 149 Fed. Rep., 1022; T. D. 27802.) A new case was then prepared before the board, and a decision was rendered February 19, 1907. An appeal was taken to the third circuit, and in the court of appeals in that jurisdiction decision was again rendered adversely to the importers May 14, 1908. (Murphy *v.* United States, 162 Fed. Rep., 871; T. D. 29032.) The importers, however, have not accepted this decision as final, and the matter is still in an acute form. Twenty appeals on this subject are now pending in various circuit courts of the United States, and it is the intention of the importers to carry the matter again to the circuit court of appeals in the second circuit. It will thus be seen that nearly five years have elapsed since the inception of this litigation, and the end is not yet.

GLASS ARTICLES.

This issue arose promptly under the tariff act of 1897 on an importation made September 8 of that year. The protest was

filed September 22 and reached the board November 9, 1897, and was decided by the board October 18, 1898. The importers were unsuccessful in the circuit court and in the circuit court of appeals of the second circuit. The latter tribunal rendered its decision January 9, 1901. (Stern *v.* United States, 105 Fed. Rep., 937.) This decision was accepted by the importers for several years, but the matter has since been reopened and the case taken to the circuit court of appeals for the third circuit. This tribunal on December 16, 1907, rendered a decision against the importers. (Hempstead *v.* United States, 158 Fed. Rep., 584; T. D. 28638.) Owing to the pendency of a related question in the circuit court of appeals for the eighth circuit, the matter is still unsettled and the board is now holding on its files 4,615 protests which have accumulated in the past two and a half years.

BUFFALO HIDES.

The importers contended that the term "cattle hides," in paragraph 437 of the tariff act of 1897, did not include buffalo hides, and the litigation commenced almost immediately after that act went into effect. A protest on an importation made August 25, 1897, was filed October 15 and reached the board November 6, 1897. It was decided by the board October 3, 1898. The case slumbered in the circuit court at New York for several years, and was finally decided by that court May 31, 1902, and by the circuit court of appeals April 18, 1903, this decision being adverse to the importers. (Rossbach *v.* United States, 122 Fed. Rep., 1020.) A new case was then prepared by the importers before the board, which was appealed to the same courts, the importers being again unsuccessful. (Schmoll *v.* United States, 157 Fed. Rep., 1005; T. D. 28604.) The Supreme Court denied a petition for a writ of certiorari April 13, 1908.

This litigation had been on the domesticated buffalo hides. In the meantime question had arisen with respect to the hides of the buffalo of the Straits Settlements, known as "Singapore" hides. The litigation on this phase commenced in 1898. It was not decided by the circuit court until 1903 or by the circuit court of appeals until December 7, 1904. (United States *v.* Winter, 134 Fed. Rep., 141; T. D. 25901.) While the Government had prevailed as to the hides of the domesticated buffalo, it was unsuccessful with respect to this latter variety of Singapores. A new case was made before the Board of General Appraisers and much additional evidence was introduced. The board's decision being adverse, the Government appealed to the circuit court, where a decision has just been rendered—again adversely. (United States *v.* Wadleigh, T. D. 29821.) An appeal will probably be taken to the circuit court of appeals, second circuit. The tariff act of 1897 will thus have passed out of existence before the scope of the expression "cattle hides" will be finally established by the courts.

HAT TRIMMINGS.

This famous case arose under the tariff act of 1883. It does not appear just when the litigation had its inception. It was twice carried to the Supreme Court and lasted until May 15, 1893, when the court handed down several decisions, all of which were favorable to the importers. (Hartranft *v.* Meyer, 149 U. S., 544.) From fifteen to eighteen million dollars is said to have been refunded as a result of this protracted litigation.

CHERRIES IN MARASCHINO—ACT OF 1894.

The litigation on this question was commenced in 1895 on an importation entered January 22. A protest filed March 26, and received by the board August 21, 1895, was decided December 18, 1896. Several appeals were taken on this and other protests. These appeals lay for a long time in the circuit court in New York. Additional testimony was finally completed May 12, 1903. The cases were decided by the circuit court November 15, 1904, and by the circuit court of appeals February 1, 1906. (United States *v.* Reiss, 142 Fed. Rep., 1039; T. D. 27119.) Eleven years' delay.

CHERRIES IN MARASCHINO—ACT OF 1897.

In the meantime a somewhat similar question had arisen under the tariff act of 1897. It was the understanding that if the importers won under the act of 1894 they would necessarily lose under the act of 1897, and appeals under the latter act were continued in the circuit court on the basis of that understanding until the litigation under the earlier act was terminated. These cases under the act of 1897 seem to have begun in 1899 or earlier. The appeals which had been pending in the circuit court of New York were discontinued and a new case made by the importers before the board. This was decided by the board October 31, 1906, the assessment of duty being affirmed. Further evidence was taken in the circuit court, where the case was kept pending for that purpose until April 28, 1908. The circuit court reversed the board May 23, 1908, and its decision was affirmed by the circuit court of appeals January 12, 1909. (United States *v.* Reiss, 166 Fed. Rep., 746; T. D. 29507.) It will be perceived that the importers were successful under both tariffs, despite said understanding to the contrary, which had been made the basis for continuing the cases arising under the act of 1897.

DRAWN WORK.

This case has been twice to the circuit court of appeals, second circuit, and once to the circuit court, western district of Texas (Judge Maxey). The importers were defeated in the Texas case (Beach *v.* Sharpe, 154 Fed. Rep., 544; T. D. 28281), but prevailed in the second circuit. (United States *v.* Ulmann, 139 Fed. Rep., 3; T. D. 26271; and United States *v.* Simon, T. D. 29702.) The litigation seems to have arisen in 1901, the first decision by the board having been rendered April 17, 1903. (G. A. 5329; T. D. 24373.) The latest court decision (Simon case) was rendered April 13, 1909. Nearly 5,600 protests on this issue are pending before the board. The future status of the case remains with the Attorney-General, who has under consideration the question of applying to the Supreme Court for a writ of certiorari.

COLORED COTTONS.

This question appears to have arisen as early as 1902, but owing to litigation on other phases of the issue, which proceeded through to the Supreme Court and was not decided there until November 12, 1906, the matter was not taken up by the board until 1907. Exhaustive hearings were held and the decision of the board was rendered October 8, 1907. (G. A. 6670; T. D. 28447.) The board was reversed by the circuit court March 2, 1908, and by the circuit court of appeals January 12, 1909. (United States *v.* Blatter, 167 Fed. Rep., 523; T. D. 29506.) Certiorari was denied by the Supreme Court May 29, 1909. Over 2,300 protests accumulated on this issue.

BOTTLE CHARGES.

Under the tariff acts of 1894 and 1897 disputes arose as to whether the cost of bottle fittings, such as corks, caps, wiring, labels, and so forth, should be included in the dutiable value of bottles. The question first arose on an importation June 9, 1896. The importers filed a protest June 29, which was received by the board July 11, and was decided favorably to the importers December 19, 1896. (G. A. 3728; T. D. 17742.) The Government appealed to the circuit court at Charleston, S. C., where the board was reversed December 24, 1897. (United States *v.* Keane, 84 Fed. Rep., 330.) This ruling was followed by the board in an unpublished decision dated January 26, 1899.

The record was returned to the circuit court June 3, 1899, and the case there slumbered three years and a half, being finally decided on November 6, 1902. (West *v.* United States, 119 Fed. Rep., 495.) The board was again reversed in this case, the New York court disagreeing with the one at Charleston. This decision was acquiesced in by the Government and many thousands of dollars were refunded to the importers. Under the tariff act of 1897 conditions were reversed, it being to the interest of the importers not to have the charges included in the dutiable value of the bottles. The board naturally followed the decision in the West case. An appeal was taken by the importers, and the board was affirmed by the circuit court at New York on the authority of the West decision, February 20, 1905. (Leggett *v.* United States, 138 Fed. Rep., 970; T. D. 26270.) The importers prosecuted the appeal to the circuit court of appeals, second circuit. This tribunal, while the appeal was still pending before it, uttered a dictum in another case, which had an adverse bearing on the importers' chances in that court, and when the appeal was reached for argument, after a year's delay, it was dismissed, on consent of the importers, February 20, 1906. The importers then prosecuted an appeal to the first circuit. This appeal was decided by the circuit court of appeals in that jurisdiction on December 20, 1906. (Hayes *v.* United States, 150 Fed. Rep., 63; T. D. 27806.) That court overruled the decision by the circuit court at New York and indorsed the former decision of the Charleston court in the Keane case, that decision being in favor of the importers. A writ of certiorari was denied by the Supreme Court December 16, 1907. More than 6,000 protests accumulated before the Board of General Appraisers on this issue. It will be seen that the litigation on this subject consumed a period of eleven years and embraced two tariff acts, and that the importers, although their interests were opposite under the two acts, were successful in both phases of the matter; also that the board's decisions were reversed three times, though its original ruling was right and the other two decisions were made in accordance with the rulings of higher courts.

STRUNG BEADS.

This issue arose under the tariff act of 1890, extended through part of the period of operation of the tariff act of 1894, and

through ten years of the life of the act of 1897. The point of the importers' contention was that the provision for beads "not strung" excluded only beads permanently strung, and that beads temporarily strung were "not strung" within the meaning of the law. The question arose on an importation made February 25, 1891. The board rendered its decision September 19, 1891. An appeal was taken to the circuit court at New York, and lay dormant there until April 25, 1894, when that court affirmed the board. (In re Steiner, 66 Fed. Rep., 726.) The circuit court was affirmed by the circuit court of appeals, second circuit, January 23, 1895. (Steiner *v.* United States, 79 Fed. Rep., 1003.) This decision was accepted by the importers for a while, and was then reopened in a Chicago case arising under the Dingley tariff. The circuit court at Chicago overruled the decision of the circuit court of appeals at New York, and its decision was affirmed by the circuit court of appeals for the seventh circuit, October 4, 1904. (United States *v.* Buettner, 133 Fed. Rep., 163.) The Government thereupon made a new case in the second circuit. The circuit court of New York followed the Steiner case and disregarded the Buettner decision, and was affirmed by the circuit court of appeals, second circuit. (Frankenberg *v.* United States, 146 Fed. Rep., 704.) The Supreme Court then granted a writ of certiorari, and affirmed the decision of the last-mentioned case, May 13, 1907. (Frankenberg *v.* United States, 206 U. S., 224.)

FEATHERSTITCH BRAIDS.

This subject arose under the tariff act of 1890 and was settled for the time being, the litigation being of unusually short duration. (In re Dieckerhoff, 52 Fed. Rep., 161.) Owing to a change in the tariff act of 1897 it became a live issue under that act, and more than 4,000 protests were filed. This matter has been decided three times by the circuit court at New York, twice favorably to the Government and once favorably to the importers. The issue finally reached the circuit court of appeals, second circuit, on an appeal by the importer, but was dismissed without argument May 25, 1906. A new case was prepared before the Board of General Appraisers, which was decided by the board July 25, 1906. An appeal from this decision was decided by the circuit court at New York November 23, 1907. The appeal to the circuit court of appeals, second circuit, was not decided until May 25, 1909. That court reversed the board and the circuit court. (Baruch *v.* United States, T. D. 29791.) It now remains for the Attorney-General to decide whether any further steps shall be taken in the litigation of this issue. In addition to the cases decided in the second circuit an appeal has been decided by the circuit court at Chicago and is now pending in the circuit court of appeals in that city.

LACE NECKWEAR.

The importers contended that lace neckwear was more specifically enumerated as "articles of wearing apparel, including neckwear," than as "articles in part of lace." The litigation commenced in 1900. The decision of the board was rendered March 8, 1901. (G. A. 4879; T. D. 22868.) The board was affirmed by the circuit court at New York July 23, 1903. (Goldenberg *v.* United States, 124 Fed. Rep., 1003.) The circuit court was affirmed by the circuit court of appeals April 14, 1904. (Goldenberg *v.* United States, 130 Fed. Rep., 108; T. D. 25220.) The Supreme Court denied certiorari January 24, 1905. The importers then tried the case before the board on a new theory. The decision of the board was affirmed by the circuit court. An appeal was taken to the circuit court of appeals, second circuit, which was subsequently dismissed. A third case was then prepared. The board's decision was again affirmed by the circuit court and by the circuit court of appeals. (Goldenberg *v.* United States, 157 Fed. Rep., 1003; T. D. 28715.) This last-mentioned decision was rendered January 11, 1908, and gave its quietus to one of the most persistently fought cases in the history of customs litigation, under which thousands of protests were filed.

CHLORAL HYDRATE.

Under the tariff act of 1890, the question was whether chloral hydrate and similar preparations were more specifically enumerated as chemical compounds or salts than as medicinal preparations. The question did not arise under the tariff act of 1894, but recurred under the tariff act of 1897 in another form, the issue being whether the articles were dutiable at the rate provided for preparations in which alcohol is used. On an importation made October 20, 1890, which was the subject of protest received by the Board of General Appraisers February 16, 1891, the board held (April 15, 1891) that the article was dutible as a medicinal preparation. (G. A. 495; T. D. 11052.) This decision was reversed by the circuit court at St. Louis and by the circuit court of appeals, eighth circuit, February 6, 1893. (United States *v.* Battle, 54 Fed. Rep., 141.) A new case was made before the Board of General Appraisers, which on the strength of new evidence reaffirmed its former decision, July 22, 1893. (G. A. 2221; T. D. 14292) This decision was reversed, however, by the circuit court at New York, April 26, 1894. (Merck *v.* United States, 66 Fed. Rep., 724.) Refunds were made in accordance with these court decisions, which were subsequently shown to have been wrong, however, being in conflict with a decision of the Supreme Court May 23, 1898, on a related case, which was decided in accord with the views of the board. (Fink *v.* United States, 170 U. S., 584.) While this decision determined the classification of chloral hydrate as a medicinal preparation, the question was still left as to whether or not alcohol was used in its preparation. This issue was presented on an importation entered August 17, 1898. The protest, filed September 22, was received by the board October 15, 1898, and was decided by the board April 10, 1899. (G. A. 4412; T. D. 20994.) The board held that alcohol had been used in its preparation. The importers appealed to the circuit court at New York, which reversed the board, May 24, 1900. (Phair *v.* United States, 105 Fed. Rep., 508.)

This decision was acquiesced in by the Government, and was followed by the board in a decision rendered August 6, 1900. (G. A. 4740; T. D. 22411.) The Government then withdrew its acquiescence, and an appeal from the decision of the board was prosecuted to the circuit court of appeals, second circuit, where the Government finally triumphed in a decision rendered May 23, 1903. (United States *v.* Schering, 123 Fed. Rep., 65.) The latest published decision by the board on this question seems to have been rendered February 1, 1904. (G. A. 5567; T. D. 24970.) The importers have since continued to file protests occasionally on this material, but they have not been seriously prosecuted and have been overruled by the board with only formal consideration. The importers thus recovered large sums under the tariff act of 1890, which the subsequent decision in the Fink case shows them not to have been entitled to. Extensive refunds were also made under the act of 1897, during the operation of the acquiescence which the Government withdrew as above noted. The litigation in its various phases will be seen to have lasted, with an intermission during the act of 1894, from 1890 to 1904.

During all this litigation an illegal rate of duty was being exacted upon the involved merchandise, amounting in the period of time covered by the cases recited to more than $50,000,000. It is estimated by some that instead of $15,000,00 or $18,000,000 being paid in the Hat Trimmings cases it was more nearly $30,000,000. In that case, though it arose in 1883, $5,592,075.91 refunds have been paid out since the Dingley law went into effect.

The Finance Committee, after thoroughly considering the history of these cases and the disastrous results, was moved to the proposed amendments, which cure all of these defects. The litigating of the same issue in different jurisdictions, as shown in these cases, is not to be charged solely to importers. The Government, often prompted by the hope of a better presentation of the case, or of a more favorable hearing in a different court, has pursued to a great extent the same policy.

The Finance Committee does not approve of any system that permits of such procedure and the incidental extended delays. It has, therefore, reported to meet these objections an amendment establishing a single court for the determination of these issues. There is provided in that bill plenary power in the presence of an incomplete record to refer the case back to the Board of General Appraisers, that the record may be completed before final decision. This will at once make a complete record in every case, and defeat the policy of selecting one court after another according to the caprice of either litigant.

The committee deemed it further necessary in pursuit of this purpose, in view of the fact that many of these cases were probably lost in one court and not in another by reason of the exchange of attorneys unfamiliar with the issues, that there should be one force of government attorneys, of requisite ability and paid sufficient for their retention, to conduct these cases from inception to conclusion in the court of final resort.

This is not a matter the subject of criticism of any of the officers of the Government or of the courts or judges, but it is a fault which rests in the deficiency of the system provided by law, and the committee is convinced that the measures proposed will meet all these glaring deficiencies in existing statutes, and provide a sound, equitable, and speedy system for the adjudication of customs appeals.

These cases prove that the average life of an appeal does not show the real vice of the system. The real vice lies in the possibilities of delay proven. Undoubtedly counsel are quite willing to occupy the terms of court with the less important

issues, if the great ones can be, as they are, strung along over periods of many years.

It can hardly be gainsaid, in view of the great variety of decisions, that a single force of counsel before a single court for proper preparation and trial of these cases would end in many victories for the Government impossible under the present system.

The customs administrative law of 1890 was in letter and in spirit intended to expedite the decision of customs appeals. The members of the Board of General Appraisers, sworn to perform duties under that law, were charged with the spirit and letter of the law to expedite the decision of these cases. They have been criticised not alone in the press, but by public officials as exercising an unnecessary and unjustifiable amount of zeal in these matters. It was their sworn duty under the law under which they were appointed to expedite the decision of these cases as much as possible. The board was created for that purpose, and any zeal manifested in that direction has its warrant in the letter and spirit of the law under which they were appointed.

It is now charged and made one of the principal arguments against this amendment that it is prompted by the Board of General Appraisers and members thereof with a view to creating for themselves positions upon the proposed circuit court of customs appeals. This charge is completely and absolutely disproven by the records of this Congress. During the pendency of this bill in some form or other during the several Congresses since its first introduction in the House of Representatives the board and every member of the Board of General Appraisers appeared before the Ways and Means Committee of the House and the Finance Committee of the Senate urging in furtherance of this purpose not the creation of a special tribunal, but that customs appeals should be eliminated from the circuit courts and taken directly from the board to the regular United States circuit courts of appeal. A bill, prepared and introduced in the House by Mr. PAYNE (H. R. 7113), involving that identical provision, was advocated by the general appraisers and was favorably reported from the Ways and Means Committee in the House of Representatives in 1905.

Subsequently, and in the Sixtieth Congress, 1908, a similar bill, introduced by Mr. PAYNE, was approved and advocated by the board, as will appear by the hearings before the Ways and Means Committee, before whom a committee of the Board of General Appraisers, on invitation of that committee, appeared and advocated its passage.

This bill provided an appeal, not to a special court of customs appeals, but to the regular United States circuit courts of appeal throughout the country. That bill, advocated by the members of the Board of General Appraisers, passed the House and came to the Senate for action. When it appeared in the Senate, a protest was filed against it by the members of the circuit court of appeals for the second circuit. The protest of the judges of that court is on file to-day with the Finance Committee, and I will read from it what they had to say about the matter at that time. It is as follows:

OFFICE OF THE CLERK,
U. S. CIRCUIT COURT OF APPEALS, SECOND CIRCUIT,
New York, April 22, 1908.

Hon. NELSON W. ALDRICH,
United States Senate, Washington, D. C.

DEAR SIR: We have just learned that a bill has been passed by the House of Representatives, and is now before the committee of which you are chairman, making certain changes in the procedure touching the review of assessments for duty on imported merchandise.

With one provision of the bill only is this court concerned. Had we known sooner that such legislation was in contemplation, we should have furnished your committee and the Committee of Ways and Means of the House with the following information, which would seem to be entitled to consideration before making the particular change in the procedure which is referred to. The bill abolishes appeals from the Board of General Appraisers to the circuit court and from the circuit court to the circuit court of appeals, and substitutes therefor an appeal direct from the Board of General Appraisers to the circuit court of appeals.

* * * * * * *

It would seem that the immediate result of the passage of the bill as now framed would be very greatly to increase the amount of business to be disposed of by the circuit court of appeals. The consequence might very well be that this court would become so congested as to be unable to dispose of its calendar each year. This we consider a most serious matter, because circuit courts of appeal were originally constituted for the express purpose of disposing in each year of all the appeals which might be taken to them.

We offer for your consideration the following figures:

Appeals heard and disposed of.

OCTOBER.

1898–1899	157
1899–1900	163
1900–1901	156
1901–1902	143
1902–1903	185
1903–1904	199
1904–1905	234
1905–1906	273
1906–1907	285

When the calendar did not present more than 160 cases to be disposed of the circuit judges were able to hold sessions of three weeks for the hearing thereof with recesses of two weeks each between for the disposition of the same. Since the great increase of the past three years the recesses between sessions, during which the opinions have to be written, have necessarily been reduced to one week each. What the result might be if the present calendar of 285 cases were suddenly increased by adding 200 additional appeals it would be difficult to forecast.

We remain,
Very respectfully, yours,

E. HENRY LACOMBE.
ALFRED C. COXE.
H. G. WARD.
WALTER C. NOYES.

In view of that protest of the judges of that court the Senate Finance Committee changed the provisions of the House bill and provided that appeals should take the course previously stated, which is in fact and effect the old system except that all testimony must be exhausted before the board.

The Finance Committee, therefore, is, under the protest from the judges of that court, presented with the dilemma either of creating a special court of customs appeals in order to expedite these hearings or of imposing the cases upon courts of appeals which have already protested against the same and stated that the amount of work could not possibly be handled by them. No other course was open under the circumstances; and the fact that the Board of General Appraisers for years advocated this system until it was defeated by the protest of the judges in the second circuit shows conclusively that their purpose in this matter is not a selfish one, but is in harmony with the purpose and actions of the board for many years to carry out the spirit and intent of the laws of the Congress.

In the administration of the customs laws it should not be necessary to undergo the long delay and expense and uncertainty of an application for a writ of certiorari to the Supreme Court in order to have uniformity of decisions, but this should be effected by the establishment of such a tribunal as would render this a matter of expeditious establishment.

A review of some of these instances will be instructive. It will not only demonstrate the vice and uncertainty of having numerous coordinate tribunals of last resort, but illustrate as I proceed the infinite maneuvers employed and possible under such a system by litigants dodging courts of unfavorable bent and seeking those of favorable disposition, all at the expense of the government revenues, resulting in extreme delays in final decision in customs cases.

BOTTLE CHARGES.

In this issue the question was whether the cost of bottle fittings, such as corks, labels, caps, and so forth, should be included in the dutiable value of the bottles or attributed to their contents. Under the act of 1894 the board held that they should be applied to the bottles. This decision was reversed by the circuit court in South Carolina. (United States *v.* Keane, 84 Fed. Rep., 330.) A subsequent decision by the board following the Keane case was then reversed by the circuit court for the southern district of New York, which overruled the South Carolina court. (West *v.* United States, 119 Fed. Rep., 495.) The Government acquiesced in the decision in the West case.

Under the present tariff the importers' interest was in having the opposite construction prevail; that is, that the charges should not be included in the dutiable value of the bottles; and probably 6,000 cases came before the board on this proposition. The board followed the West decision, which, though against the Government under the act of 1894, was in its favor under the act of 1897. The board was affirmed in the circuit court for the southern district of New York. (Leggett *v.* United States, 138 Fed. Rep., 970.) The importers appealed to the circuit court of appeals, second circuit. But when the case was reached it was dismissed by the importers, because in the meantime that court had expressed a view unfavorable to the importers in United States *v.* Dickson (139 Fed. Rep., 251), where the point had come up incidentally; and another appeal was taken and carried before the circuit court of appeals for the first circuit, which rendered a decision in favor of the importers. (Hayes *v.* United States, 150 Fed. Rep., 63.)

Thus we have had the South Carolina circuit court overruled by the New York circuit court, and the circuit court of appeals for the second circuit overruled by the circuit court of appeals for the first circuit. And incidentally it may be remarked that this is but one of several instances where the importers, after winning an issue under one tariff, have under a succeeding tariff successfully maintained the opposite contention, oftentimes in a different circuit, where a new case had been made up.

The delays in ultimate decision of these appeals is nowhere registered as with the board. An accumulation of undecided issues means an accumulation of undecided protests upon the board's files and a general clogging up of the possibilities of cleared dockets. It not alone greatly increases the work of the

board and its clerical force, but that of the clerical force at every collector's and appraiser's office throughout the country, for it makes necessary the handling and decision of thousands of protests that would never be filed were these issues determined much earlier. Activities of the board are absolutely necessary, therefore, to prevent a positive congestion of this line of work.

The amendment presented by the Senate is to remedy this condition, and is deemed by the committee under the circumstances the best possible remedy the situation demands.

It was drafted by a committee designated by the Finance Committee, consisting of representatives from the Treasury Department, the Attorney-General's office, and the Board of General Appraisers, and was afterwards entirely revamped by the entire Finance Committee.

The public prints of recent months have contained excerpts from a letter said to have been written by one of the judges of the United States circuit court of appeals for the second circuit purporting to set forth the condition of the business of that circuit and urging the conclusion that the district and circuit courts and the circuit court of appeals in that circuit were not overcrowded with cases and could easily dispose of all cases arising therein, including customs cases.

While the issue as to the condition of the dockets of that circuit only indirectly bears upon this bill and does not cover many of the reasons for its enactment, it may be well to point out that while about 80 per cent of the customs issues are decided in that circuit, the remaining portion is decided by the various other circuit courts and circuit courts of appeal throughout the United States wherein much greater delay is had. Undoubtedly in the past two or three years, by reason of extraordinary efforts made, the life of a customs appeal in the United States courts for the southern district of New York has been shortened. The records will show that the period of final decision in that circuit is now much less than in the other circuit courts of the United States.

The inevitable result of this condition, which is proved by the trend of appeals in the past few months, will be that attorneys making issues will seek some other jurisdiction for the reason that it will be much more profitable to do so. It can be pointed out that in one or two of the jurisdictions wherein delay has been much aggravated in recent years customs attorneys are now seeking those courts for the adjudication of cases. The reason is obvious. It is much more profitable to do so.

The fact, therefore, that in the southern district of New York customs cases are being disposed of with greater rapidity than heretofore, and that all of these cases arising therein might be disposed of with dispatch, is no convincing argument against this measure, because it is a condition the benefits of which will be neutralized by seeking other jurisdictions. And there are other more important considerations moving the enactment of this measure.

This letter, if current reports be true, emanates from one of the most eminent jurists of the country, Judge Lacombe. The letter, however, when measured in its entirety, shows a condition existing in that circuit which, when taken in connection with the official statistics at hand, argues the necessity for rather than against a special customs court of appeals.

It draws a distinction between the number of cases *docketed* in that court and the number of cases which are *brought to an issue*, and therefore constitute business for the court. It deals solely with the latter class of causes and shows that in that circuit causes docketed but not at issue are not regarded as "business for the court." No doubt there is sound reason for this procedure in that circuit, which differs, as stated by the learned writer of the letter, from the procedure in all other circuits, but it is a condition fruitful of delay and should be remedied. The court concerns itself not with the cases upon the docket which are not pressed for trial, but with the cases that are actually at issue and pressed for trial by both parties to the record. The difference, therefore, in statistics given by the court and those by the report of the Attorney-General and in other records will be readily understood.

The very fact that the court does not concern itself with the docket but only those cases which are cited for issue in trial by consent of both parties reveals a condition of affairs which in no sense expedites but delays the decision of the causes, including customs causes, docketed in those courts. Under such circumstances and procedure of the courts customs cases which are not pressed for issue by both the Government and counsel for the importer may go without trial for many years, as they are not regarded as business "for the court" until they are so pressed for trial. With this point in view the differences in statistics concerning this jurisdiction are readily understood. It will likewise be equally understood that there are pending in that jurisdiction many customs cases which have been pending therein for years and which to-day are undecided. That there may be no error here these cases will be included in this record by title and number. This distinction in the practice of that court is clearly pointed out and, as stated by the learned judge, is as follows:

> It has for many years been the practice to hold such a session (speaking of an extra session for customs cases) whenever the district attorney advises the court that there are cases left over from the regular assignment, in order that in this class of cases all issues *in which both sides are ready for argument* may be heard before vacation.

And he further states:

> In other parts of the country the number of docketed causes is a fair exponent of the condition of business, because a case when once docketed is automatically progressed to some conclusion. But under the practice in New York the really live causes are those which, *by the filing of a note of issue*, have reached the calendar; those only are actually pending *in the court* so as to make business which consumes its time. So, too, in the court of appeals a cause goes on the register when the record is certified from the court below, but it *makes no business for the court until the parties have the record printed and move the cause to the argument calendar.*

This clearly points out the distinction which explains entirely the discrepancy in the statistics offered. Only those cases *in which both parties* move for trial are considered "pending in the court."

In a class of cases like these, wherein, by all the means permitted by the law, one of the parties to the record is interested in delaying the certification of these cases for the "argument calendar" spoken of by the learned judge, we would of necessity expect to find upon the "docket" other than the "argument calendar" a large number of customs cases, which would seem to be resting somewhere between the argument calendar and the calendars of the Board of General Appraisers who decided the case below. Accordingly, it is perfectly consistent with the statement of the learned judge that while the "argument calendar" is clear, we might expect to find the docket of the court containing many undecided customs cases which have been pending thereupon for a considerable period of time.

The distinction between the docket, embracing all appraisers' appeals pending, and the argument calendar, embracing only those appraisers' appeals placed thereon for hearing by agreement of both parties, is further developed in the letter of the learned judge. He states:

> Table D shows what number of appraisers' appeals came on for hearing at each session of the court in each calendar year, and what number of them were then disposed of. Generally speaking, however large was the number appearing on any calendar, all causes actually ready for argument were then disposed of. Of the cases carried over to a later session, many were disposed of by the parties in the interim. For example, it will be seen that in 1903 at the January session there were 229 cases on the calendar and only 52 then disposed of, leaving 177 to go over. But at the next session, in May, there were only 51 cases on the calendar, all that were left of the 177, plus whatever new issues were added to the calendar. As was stated before, in every year at the last session before vacation every cause on the calendar *in which both sides were ready* has been heard.

This paragraph, in connection with the table submitted, makes more marked the distinction to be observed. A reference to the table discloses the following:

Session.	On calendar.	Disposed of.
1903.		
January 20	229	52
May 25	51	26
October 26	229	63
December 14	166	51
Total	575	192

These are the precise figures of the learned judge. An examination of them makes perfectly obvious the situation. There were 229 cases on the calendar January 20, and 52 disposed of, leaving 177 undisposed of. On the calendar of May 25 there were but 51 cases and 26 disposed of. It does not necessarily follow, as stated by the learned judge, that these 177 cases were disposed of in the interim by agreement. It more likely follows that consent to placing them on the argument calendar of May 25 was wanting, and that for that reason but 51 cases on the docket were put on the argument calendar. The interim between May 25 and October 26, the fall docket, is the vacation period and the one of least work and lowest number of appeals from the board; yet we find appearing upon the docket October 26, 229 cases, which undoubtedly embraced many of the 177 cases, and of these 63 were disposed of at that docket. And on the docket of December 14 there were 166 cases, of which 51 were disposed of. This shows a total of 575 cases docketed for the year, with 192 disposed of

The natural conclusion is that the small number of cases on the May docket was occasioned by a refusal on the part of one

of the parties to the record—probably the party interested in delay, that further protests might accumulate—to enter these cases upon the argument calendar. After, however, further accumulations had been had, consent was given to placing many of these upon the calendar, which accounts for the high number of 229 on the October 26 calendar.

In that jurisdiction the procedure, according to the learned judge, is not to regard the cases in court or the court's business until by agreement they are put upon the argument calendar. Being greatly to the interest of counsel for the importers not to agree until a sufficient number of protests have accumulated to make it worth while to try the case, it is not likely that the cases would be put upon the argument calendar until that time arrived.

This will undoubtedly account for the fact that the number of cases on the calendar for the next year had grown to 657 and those disposed of 204; and for the year 1905 they had grown to 848 and the number disposed of 344. Undoubtedly many of these cases are disposed of in the interim. These are generally similar issues to those decided by the court, and therefore disposed of upon order.

The same idea runs through a further quotation from the learned judge's letter:

Besides the cases in the circuit court registers, which may properly be called "dead," there are others which are merely temporarily suspended, awaiting the final decision of some leading case involving the same or similar questions to those presented in the case thus held back. The litigation known to the clerk's office as "Appraisers' appeals" is especially prolific in this particular, as must be apparent to anyone who considers the character of such litigation. To-day there are undoubtedly thousands of suspended protests before the Board of General Appraisers awaiting the solution of some legal question, presented in a test appeal, but upon inquiry at the district attorney's office as to the size of the calendar to be called at the session of May 10, I am informed that there are not altogether more than 70 independent issues, and that of these there will *probably be ready for argument* not more than enough to occupy the allotted two weeks. As was stated before, if there are any left over, they can readily be disposed of in June.

Here again we find the distinction that only those cases will be tried which are "ready for argument," as explained before, by both parties to the record. The calendar of May 10 is now concluded, and the tabulated list submitted of issues pending in that jurisdiction undecided after the calling of that calendar is available.

A precise register of all the appeals from the Board of General Appraisers pending in that court and in every other court is prepared quarterly and issued by the Treasury Department. According to that record, which is reliably accurate, as it is checked up every day by a complete system, there were pending in the circuit court for the southern district of New York and the circuit court of appeals for the second circuit on April 1, 1909, the following number of suits and issues:

	Circuit court.	Circuit court of appeals.	Total.
Number of suits pending	558	68	626
Independent issues involved in these suits	150	30	

The number of independent issues wherein the same question is involved in both the circuit court and the circuit court of appeals is 8. The total number of independent issues pending April 1, 1909, in this circuit court and circuit court of appeals was, therefore, 172.

Involved in these issues are 50,750 protests on the files of the Board of General Appraisers.

I will further add that since the writing of the letter of Judge Lacombe the May calendar has been held, with this result:

Number of issues decided in the circuit court, 42; number of these at present appealed to the circuit court of appeals and thus kept alive as pending issues in those courts, 13; net reduction of issues by May calendar, 29.

Number of issues determined since April 1 in the circuit court of appeals, second circuit, not already estimated as disposed of in circuit court and not appealed to the Supreme Court, 9; number pending on writ in the Supreme Court but decided in second circuit, 3; total net issues disposed of by this circuit court and circuit court of appeals since April 1, 1909, 39; leaving 133 independent issues still pending and undecided in those courts.

I will submit to be printed in the RECORD a list of these cases by title and suit number, with the date when the same were decided by the Board of General Appraisers and the date of the return of the record to the circuit court, with a statement of those which involve the same issue and other pertinent facts explanatory thereof, that a precise record may be made of the actual customs issues pending and undecided in that jurisdiction.

An examination of these suits shows that one has been pending since 1901; several since 1903 and 1904 and many since 1906 and 1907; in fact, a majority of them.

The system of taking up cases only upon agreement of both parties is precisely one of the conditions which this bill is calculated to meet. Accordingly it is provided in it, on page 44, lines 11 to 16, as follows:

Immediately upon receipt of any record transmitted to said court for determination the clerk thereof shall place the same upon the calendar for hearing and submission; and such calendar shall be called and all cases thereupon submitted, except for good cause shown, at least once every sixty days.

Here is a provision of law provided by the committee which will not make the hearing and determination of customs cases dependent upon the will and caprice of both parties to the record, but compels an early hearing.

Not the least vulnerable point of hearing only those cases that are set by agreement is that in any circuit where there are several judges it enables the parties to select their own judge, which they might be actuated to do by the known trend of the mind of the particular judge, as shown in previous decisions.

This condition of dockets would seem to correspond precisely with representations made to the Congress and the findings of the Judiciary Committee of the Senate.

In 1906, upon representations to the Congress made by those conversant with the facts, an additional judge (Judge Hough) was added to the circuit court for the southern district of New York. It was then stated to the Congress that the overburdened condition of the dockets of that jurisdiction made it not only necessary at that time to provide an extra judge, but that during the year 1909 another additional judge would necessarily have to be added. True to this prediction, in February, 1909, another judge (Judge Hand) was provided for that jurisdiction.

Representations made to this Congress at these times as to the condition of business in that jurisdiction are set forth in the report upon that bill made to the Senate in February of this year—only four months ago—and I will read therefrom as to the congested conditions of the docket of the courts for that district. The representations filed February 22, 1909, made at that time as to customs cases pending in the courts of that jurisdiction, were as follows:

The southern district of New York has the greatest volume of customs cases. In the country at large in 1908 there were terminated 745 cases and 1,142 left pending. In the southern district of New York, during the year 1905, there were terminated 328 and left pending 631 cases. In 1908 there were terminated 515 and left pending 855.

These are the representations upon which the Senate was asked to act and upon which an additional judge was added to that circuit during the present year, only three months since.

It stands without reason that that circuit, embracing the great city of New York and suburban counties and the litigation arising therein, including many cases of trust prosecution now and heretofore pending therein, many cases of receiverships of corporations and street railway systems in the city of New York, and many cases of admiralty and criminal jurisdiction arising at that great port, must of necessity more than demand the time of the judges of that court. Added to this is the criminal jurisdiction.

This statement perfectly comports with all the representations which have been made to the Congress in various communications upon this subject. In Senate Report No. 2676, Fifty-ninth Congress, first session, filed April 16, 1906, supporting Senate bill 5533 for the appointment of an additional judge for the southern district of New York, there is set forth the contents of a letter signed by Judge Lacombe, author of the letter above quoted, and other judges of that jurisdiction. The report is as follows:

[Senate report No. 2676, Fifty-ninth Congress, first session.]

The Committee on the Judiciary, to whom was referred the bill (S. 5533) to appoint an additional judge for the southern district of New York, report it without amendment and recommend that it do pass.

The bill provides for the appointment of an additional judge for the southern district of New York. The business of the federal courts in this district has become so extensive that it is impossible for the federal judges to discharge it, and unless an additional judgeship is created either the criminal business must go largely unheard or the civil business must be neglected. The situation is clearly set forth in the joint letter of Circuit Judges William J. Wallace, E. Henry Lacombe, William K. Townsend, and Alfred C. Coxe, dated April 4, 1906, to the chairman of the Judiciary Committee of the Senate, which reads as follows:

"Since 1873 the terms of the federal courts for criminal business in the southern district of New York have been held by the district judge for the eastern district of New York (living in Brooklyn) pursuant to section 613 of the Revised Statutes.

"The business of the federal courts in the southern district of New York generally has been so extensive that it has rarely happened that any of the circuit judges or the district judges of the southern district could devote any time to the criminal terms. At the present time the general business of the eastern district has become so large that it is no longer practicable for the district judge of that district to hold the criminal terms in New York, and he has recently announced to the circuit judges that after the 1st of January next he will be unable to hold them.

"As you are aware, we have now two district judges in the southern district of New York. The time of one of these judges is almost wholly taken up with admiralty causes and the time of the other almost wholly with bankruptcy proceedings, and it is only occasionally that either of them is able to give any time to the business in this district outside of those branches.

"Under the circumstances it seems desirable, and, indeed, imperative, that there should be another district judge appointed for the southern district of New York whose time can primarily be given to the disposition of criminal business, which is so large and important that it alone will justify the creation of the office. It seems likely that there will be considerable increase in the criminal business of the southern district; indeed, the prosecutions under the antitrust law, a number of which are now in a preliminary stage, and are of a character which will consume a great amount of time, will, of themselves, considerably increase the work.

"Under the circumstances we have felt it to be our duty to call your attention to the situation and to a district judge for the southern district of New York. We have heard that a bill to that effect has been prepared by the Department of Justice, but our information is not definite. If such a measure is introduced, we would suggest that it is desirable that the act be merely general, not specifying any particular duties to be exercised by the new judge, but giving him the same powers and the same salary that the present judges have."

At a later day, on February 22, 1909, a similar report, supporting the bill for the appointment of another judge for the southern district of New York, was filed, setting forth in much detail the condition of business, the crowded condition of the calendars, and the overworked condition of the judges for this district. Upon these representations, made to and acted upon by the Congress, an additional judge was provided for that district. The report is Senate No. 1059, Sixtieth Congress, second session, filed February 22, 1909, as follows:

The Committee on the Judiciary, to whom was referred the bill (H. R. 19655) providing for an additional judge for the southern district of New York, report it favorably and recommend that it do pass. Your committee adopt the report of the Committee on the Judiciary of the House of Representatives on this bill, and such report is appended hereto as part of the report of your committee:

[House Report No. 1884, Sixtieth Congress, second session.]

The Committee on the Judiciary, to whom was referred the bill (H. R. 19655) providing for an additional district judge for the southern district of New York, and for other purposes, report and recommend that the same do pass.

The bill provides in its first paragraph for the appointment of an additional district judge for the southern district of New York, to meet the exigency now existing in both the circuit and district courts of that district by reason of the continued and increased growth of the business of those courts.

The bill, in its second paragraph, repeals that part of section 613 of the Revised Statutes which allows to the judge of the eastern district of New York $300 a term for trying the criminal cases in the southern district. The increase of business in the eastern district requires the presence of its own judge there. The addition of another judge to the southern district should remove the need of having the judge of the eastern district sit in the criminal cases in the southern district.

The need of a new district judge for the southern district of New York was foreshadowed by members of your committee when considering, at the first session of the Fifty-ninth Congress, the then pending bill for an additional judge for that district, which bill was subsequently enacted into law. The statistics then presented and the statements of the work being done then caused members of your committee at that time to remark that the judge then provided for would not relieve the peculiar situation existing in that district. The judge appointed by the President to fill the place created by the bill passed in the Fifty-ninth Congress was the Hon. Charles M. Hough, who went to the bench admirably equipped for his work, and has rendered conspicuous and untiring service. Twice, however, he has been seriously ill, due largely to overwork. While the illness of one of the judges increases the demands for an additional judge, an urgent demand exists for an additional judge in any event. A district judge is recommended, as he can sit in both circuit and district courts.

The growth of the business in the southern district can be indicated by the work of each court, as shown by the figures for 1905, which preceded the last addition of a judge to the court, and the figures for 1908, the past fiscal year.

For the year ending July 1, 1905, the circuit court of appeals for the second circuit disposed of 254 civil and 8 criminal cases, amounting altogether to 262 cases, as appears in the Attorney-General's report for that year. The next largest number of cases disposed of by any circuit court of appeals was by the court for the eighth circuit. The circuit court of appeals for that circuit disposed of 163 cases, which is 99 less than those disposed of by the court for the second circuit.

The same situation exists to-day, except that the court for the second circuit has done even more work. In the last fiscal year it disposed of 281 cases. The eighth circuit, which again was the next largest in the number of cases disposed of, aggregated 203 cases.

The southern district of New York has the greatest volume of customs cases. In the country at large in 1908 there were terminated 745 cases and 1,142 left pending. In the southern district of New York, during the year 1905, there were terminated 328, and left pending 631 cases. In 1908 there were terminated 515 and left pending 855.

The southern district of New York does the largest admiralty business. In 1905 there were commenced 388 admiralty cases, and 398 were terminated, leaving 1,108 pending. In 1908, 734 were commenced, 431 terminated, and 1,475 were pending.

The bankruptcy business of the southern district is large and ranks among the largest. In the year ending September 30, 1905, there were closed 473 bankruptcy cases, and in 1908 there were closed 345 voluntary cases and 205 involuntary cases, leaving pending 573 voluntary cases and 846 involuntary cases. In 1905 there were filed 466 voluntary petitions and 461 involuntary petitions. In 1908 there were filed 493 voluntary petitions and 734 involuntary.

The general civil business of the district is very great, exclusive of admiralty, which has been heretofore alluded to. In 1905, 890 cases were commenced, 484 were disposed of, and 11,769 were pending. In 1908, 668 were commenced, 555 disposed of, and 12,351 were pending. No particular stress is laid on those pending, owing to the fact that there are many old cases which have been kept on the docket for years and which probably will never be tried.

The criminal business is large. Last year there were 70 post-office cases commenced, 55 terminated, and 36 left pending. There have been commenced 6 banking cases, 1 of which has been disposed of and 5 left pending. There were 3 convictions under the pension laws and 24 under the naturalization laws, and 53 cases were left pending under the latter. Under the interstate-commerce act 1 prosecution was commenced, 4 terminated, and 5 left pending. Two were commenced and pending under the meat-inspection act. There were commenced 60 miscellaneous prosecutions and 48 were terminated, 66 being left pending.

The work of the southern district of New York has, of course, been impossible of accomplishment by its three judges of the southern district alone, the time of the circuit judges being taken up wholly with appellate work. The circuit judges do most of the chambers work and hear possibly a majority of the litigated motions, but do practically no trial work. During the last two and one-half years, during which time there have been three district judges, the time of two has been consumed on the strictly civil district work, leaving only one of them to try the enormous circuit calendar. He has been aided by the judges of the districts of Vermont, Connecticut, western and northern New York, each of whom contributed eight weeks per year for the trial of civil cases.

If forty weeks be counted a court year, these four judges from other districts, each giving eight weeks, do not contribute the time of one other judge toward the civil work. Meanwhile the civil work is steadily increasing, as shown by the figures hereinbefore cited. Nor has the unhappy situation which existed in 1905, when the circuit court calendar had fallen three years behind and it required four years for an action to be prosecuted from its beginning to the circuit court of appeals, been relieved.

If the time of the judges was disposed of in the manner just indicated, and which is absolutely necessary if even a fair attempt is to be made toward disposing of the civil business, there would be no one to attend to the criminal business.

In 1905 the six terms of court which were held in the southern district by the judge of the eastern district were proven insufficient for the criminal work, and the then judge of the eastern district announced that he could no longer give his time to that work.

Meanwhile the criminal business of the southern district has increased, and, as a matter of fact, during the last two years there have been in the southern district nearly if not as many trial days devoted to criminal business by southern district judges as by the eastern district judge. Criminal cases show a very marked tendency to increase in view of the increased activities of the Government. The Hepburn law, the naturalization law, the pure-food law, the meat-inspection law, the immigration law, and the whole body of the interstate-commerce law all tend to multiply offenses against the United States.

Thus, during the first six months of this fiscal year, viz, July 1, 1908, to January 1, 1909, although this half year is much the lighter half, including, as it does, the three summer months, the circuit court has tried 22 criminal cases, occupying seventy-three court days. During the corresponding six months of the previous fiscal year the circuit court tried only 8 criminal cases, occupying in all twenty-two court days. For the first time in the history of the circuit court for the southern district of New York it was necessary to hold a summer session of fifteen days during the month of July.

This imposes a most unreasonable strain upon the judges in view of the character of the work performed by the judges during the rest of the year. So, too, the average time for trial grows longer as the issues become more complicated; as, for instance, in cases arising under the Sherman law and in the recent prosecution for offenses under the national banking law. Furthermore, there are pending for trial several important government cases of unusual length and difficulty, involving large frauds of the revenue and violations of the national banking laws.

It must be borne in mind that before the courts of the southern district of New York are brought many of the most important and extensive cases of the country, both government and private suits—such as, for instance, the 80-cent gas case, the Harriman case, and the tobacco trust case—involving not only a great deal of time in actual court, but also weeks and even months of time in the study of voluminous records and briefs in the preparation of opinions.

A single case of this character is effective in stalling the calendar, and the committee is of the opinion that the number of these important and complicated cases in which the Government is interested tends to grow with each year. With the present supply of judges the Government can not keep abreast even of the current criminal work in the manner in which it should be kept up. This criminal work necessarily takes precedence of the civil work, and in such civil work there is even greater danger of congestion.

Figures will show a growth of business in the other districts of the second circuit, thus lessening the availability of their judges for southern district work. But the southern district of New York is the forum into which all of the important federal litigations of the circuit naturally drift. All of the important cases are tried there. As the litigation of the circuit increases, that pressure is felt in the southern district rather than in the other districts. Therefore the additional judge should be appointed in the southern district rather than in any of the other districts.

We find, therefore, that the emergency suggested by members of your committee at the time of the creation of the last additional judge of the southern district has become so acute as to make the appointment of a still further district judge an imperative necessity. If relief is not given, not only will the business of private litigants be indefinitely postponed, but the Government's business brought to a standstill.

In the light of these facts, it is the judgment of the committee that the bill should pass.

In a more recent document, filed with the Senate Finance Committee some time during the early part of 1909, the voluminous increase of the business in the circuit court of appeals for the second circuit and the circuit and district courts for

the southern district of New York is set forth in tabulated form. I will here insert it in the RECORD. It was a brief in support of an increase in salary of these judges.

The following table shows the growth of business in this court. It shows an enormous increase over the business of 1907:

	1908.	1907.
Law cases begun	330	289
Law cases disposed of	304	361
Equity suits begun	380	333
Equity suits disposed of	291	195
Appeals to United States Supreme Court	18	8
Appeals to circuit court of appeals	176	131
Indictments found	264	174
Indictments disposed of	200	214
Customs appeals filed	259	437
Cusoms appeals disposed of	446	204
Habeas corpus writs	18	12
Habeas corpus writs disposed of	13	12
Declarations of intention	8,689	12,689
Petitions for citizenship	404	213
Heard in open court	368	174
Motions heard	3,953	3,231

There is a corresponding increase in the business of district court of this district.

From this statement, which is evidently taken from the records of the court, it appears that though the personnel of the court has been increased by one judge since 1907 the business of the court has been greatly increased in almost every department.

The statement of the civil, criminal, bankruptcy, and other suits commenced in that jurisdiction during the fiscal year ending July 1, 1908, was 2,989 causes, while those terminated during the same period numbered 2,264. This statement shows that of the current business 725 more matters arose therein than were disposed of. The ratio of annual undisposed of new matters, therefore, is about one-third in excess of those actually disposed of. I will here insert a table taken from the report of the Attorney-General upon this subject.

There were commenced therein during the last fiscal year:

Civil cases to which the United States was a party, including 424 customs cases	469
Criminal prosecutions to which the United States was a party	191
Bankruptcy cases, voluntary and involuntary	927
Other suits, including admiralty	1,402
Total	2,989

There were terminated during the same period:

Civil cases to which the United States was a party	551
Criminal prosecutions to which the United States was a party	177
Bankruptcy cases, voluntary and involuntary	550
Other suits, including admiralty	986
Total	2,264

No man can measure the future progress and development of the country, the possible litigation which may arise, or the necessities of the tribunals of the Government for the disposition of public business speedily and accurately. It is one of the purposes of the present administration, as frequently announced, to expedite the decisions of all cases pending in the United States courts. For many years frequent complaint has been made throughout the country about the long delay in the decisions of these courts, occasioned not by lack of industry, application, or qualification of the judges, but by the increase in litigation naturally falling into these courts without a proper increase of the personnel of the courts.

From all the records at hand of previous demands made upon the Congress, no jurisdiction is more amenable to these observations than that of the second circuit. It seems to me that a fair consideration of that subject can not but lead to the conclusion that there is now pending in these courts and will be commenced therein more business than should be imposed upon the personnel of that court as constituted by law. The previous representations of the judges of that court, the findings of fact upon which this Congress has acted in adding judges thereto, and the common-sense view of the probabilities in that situation, lead unavoidably to this conclusion.

It is undoubtedly true that all the federal courts of this country, including the Supreme Court, are so overburdened with work that it is a constant subject of complaint and criticism, and every act which otherwise receives commendation should receive additional commendation by reason of the fact that one of its purposes is to relieve any of these courts of any considerable number of the cases now confined to their jurisdiction.

Before passing to the consideration of other features of the case, it may be profitable to advert to another statement in the letter of Judge Lacombe. It refers to the importance of customs cases. The learned judge states:

> Two circumstances combine to make the amount of discussion given to the customs cases small when compared with patents or admiralty where voluminous testimony as to facts calls for analysis and discussion: * * * and (2) the questions presented are almost wholly questions of law, and in the great majority of cases involve only the construction of a single clause in a statute.

The history of jurisprudence teaches that the importance of litigation can not possibly be measured and should not be minimized by the fact that only a single phrase or word or clause in a statute is involved. Particularly is this true of customs appeals, where the whole act must be read in connection with its every part and word. The history of jurisprudence teems with instances wherein great fortunes, even the destinies of human life and matters of the greatest importance, are made to depend upon a single clause in a statute. In fact, almost all litigation arising out of the construction of the law depends upon the construction of a single clause in a statute.

No better examples can be afforded than the customs litigation of this country. For example, the so-called "Figured Cotton cases" involved solely the absence from paragraph 313 of the Dingley act of the word "value." Its absence founded the contention of the importers that the cumulative duties of that paragraph are not applicable to cotton goods assessed under the ad valorem clauses of the countable paragraphs. This litigation occupied the attention of the courts for years, and the accumulated protests filed upon this subject until ultimate decision numbered thousands and involved sums of money running into more than a million dollars. The Board of General Appraisers held that the absence of the word "value" did not make inapplicable the cumulative duties in paragraph 313. This decision was reversed by the circuit court for the southern district of New York, and that decision affirmed by the circuit court of appeals for the second circuit. On certiorari, however, to the Supreme Court, that court took the view that the word was unnecessary, reversed the courts below, and affirmed the Board of General Appraisers.

So, in the celebrated Zante Currants case, the question was whether or not these two words covered certain importations from Greece. This litigation occupied the attention of two circuit courts of appeal, as I will mention hereafter. Thousands of protests accumulated thereon, and the refunds in that case touched almost $2,000,000. The whole contention was the construction of a single clause in a statute, and upon the proper construction of that and its application depended millions of dollars of public revenues.

And so all the great constitutional questions of the Government involve no more than the construction of a single clause in that document.

So it is all through the tariff act; and there might be enumerated cases in the courts without limit, wherein the construction of a single clause in the statute not alone involves hundreds of thousands, but even millions, of dollars, but its full force and effect demand a full consideration of all the other provisions of the tariff law and the decisions for all time affecting the proper construction of those provisions.

So that to argue that a question presented is of no great importance because it involves "the construction of a single clause in a statute" is to overlook the whole history of jurisprudence and innumerable decisions with which the law books are replete.

The situation in the New York jurisdiction, however, is not conclusive of the situation in this case. Indeed, it may be admitted that for all time there is ample time afforded the judges of that jurisdiction to hear and determine these cases. The situation is a broader one than that confined to the single question of whether or not the judges of any particular circuit could hear and determine all of these cases. This is but the least of the features connected with the situation.

In the district of Massachusetts on April 1, 1909, with no considerable changes since, there were pending 63 suits, involving 31 independent issues, in customs cases. Some of these cases were returned to that court in 1903, others in 1904, several in 1905, and a great many of them in 1906 and 1907.

In the eastern district of Pennsylvania there were on April 1, 1909, with no considerable changes since, pending 68 customs suits, involving 19 separate and distinct issues. This jurisdiction has always exerted great efforts to dispose of customs cases with rapidity. It is understood, however, that the calendars of those courts are so crowded with cases of all kinds that it is impossible to reach early decisions in these suits. The returns show that some of these were made in 1905, others in 1906, and many of them in 1907.

Other jurisdictions show the same results. A careful and accurate computation from the official record of appeals in

customs cases pending in the United States courts discloses that there were pending on April 1, 1908, in all courts 243 independent issues, involving approximately 65,000 protests suspended on the files of the Board of General Appraisers; that 150 of these were pending in the southern district of New York and the circuit court of appeals for the second circuit, while the remaining 93 were pending in jurisdictions outside of those named.

So it appears that the New York jurisdiction is not the only one which should be the subject of consideration in the determination of whether or not these amendments should be adopted. On the contrary, a very considerable number of these suits involving principles affecting the entire customs law and refunds of extensive amounts are involved in suits outside of the New York jurisdiction.

The most accurate test of the number of suits pending in the different courts is that registered by the number of protests upon the suspended files of the Board of General Appraisers. The number of these protests at the close of the present fiscal year, about 65,000, is the greatest in the history of the board. They all await decision of some suit in some court, and the great number indicates with some degree of precision the number of these suits pending and the necessity for a single tribunal devoting itself entirely to these cases that expeditious decision may be had.

The amount of refunds in a particular issue is no index to the importance of that issue. It may be some index of the length of time in which the suit was pending. For example, etamines showed comparatively small refunds, though the issue was one of great importance and effect upon the tariff law. The reason why the refunds in that case were small was that the case was never appealed from the Board of General Appraisers and the life of it was not more than four or five months. The effect, however, of customs decisions upon the tariff law is for all time after the decision, and the real effect upon the revenues of the country is impossible of measurement except by a comparison of the amount of refunds paid during the life of an appeal as compared to the life of the tariff act.

Customs cases differ essentially from any other class of cases. Each of them is a question in which the whole country at large is interested. For they bear upon and directly affect the terms and administration of a law that affects every citizen of the land.

It should not be regarded a criticism upon the courts of any circuit that the Congress, in its deliberation, should conclude to take from that circuit and place in a different jurisdiction cases previously within it. Congress creates courts; the Senate approves all judges; Congress devolves upon every court except the Supreme Court the jurisdiction of that court. It is within the plenary powers of the Constitution devolved upon the Congress to create, to add to, or to subtract from the jurisdiction of any court. It is the duty of Congress to vest these jurisdictions in such tribunals, to take them from the one tribunal, invest them in another, as in its opinion is for the best interests of the country.

It is not surprising, in view of the character of the opposition which has been for years offered to every effort to expedite the decision of customs cases, that when a measure of this kind is proposed there would be an attempt, through the press of the country and every other means possible, to create a prejudice against it by an endeavor to arraign it as a reflection upon the courts. It is a rightfully commendable spirit in this country to uphold the dignity of its courts. And so long as this is true, no more effectual assault can be made upon any measure than to arraign against it a prejudice, justly or unjustly founded, that its enactment contemplates a reflection upon any of the judicial tribunals of the country.

But the functions of Congress are above these petty considerations and arraignments. It is the duty of Congress to provide for its citizens efficient tribunals with adequate and speedy remedies for the enforcement of the rights of all citizens. It is particularly the duty of Congress in the collection of the public revenues to provide efficient and speedy remedies. In providing proper tribunals for the determination of customs cases Congress has proceeded in full light and obedience to the fact that there should be brought into such representatives from the various parts of the country.

It is the constitutional prerogative of the Congress to create inferior federal courts. It is the prerogative of the Congress alone to provide for the appointment of judges and to create their jurisdiction, to add to that jurisdiction or to take from it. It is the province of the judiciary alone to pass upon the cases confined to that jurisdiction by the Congress. It is for the judiciary to determine issues properly presented to them. It is for the Congress to determine what issues shall be presented before certain courts and what not. This principle is firmly embedded in the Constitution of the United States. It is the business of the Congress to consider these subjects, and in that consideration any interference or attempted interferenee upon the part of the judiciary to dictate to the Congress as to what shall be their jurisdiction and what shall not, or what classes of cases shall be submitted to them or not, or what number of cases may be considered by them or not, is an interference which is in violation of the constitutional principle which contemplates that there shall be no interference between the judicial, the legislative, and the executive branches of the Government.

This is not a question of individual right or of personal feelings, but it is a broader principle of representative government, and the committee has proceeded regardless of other considerations than its constitutional privilege and apparent duty.

The committee believes these cases involve questions of national concern, and not that of any particular district, judicial or otherwise.

It is the theory of representative government that every official is more or less unconsciously controlled by local education and environment. This is the theory which actuated the fathers in providing representative government, that every district and locality might be represented. Senators from different States, Representatives from different districts, are examples. Circuit judges, who, by law, must be appointed from residents within the circuit in which they preside; district judges the same; and the personnel of the Supreme Court of the United States, constituted upon the same theory, is of judges who are appointed with reference to their geographical residence. The theory has been vindicated by a century's experiences. The tariff law is one which affects differently different sections of the country; it is a law that affects the whole Nation, and in the interpretation of every rate, paragraph, and schedule of which the whole Nation and every section thereof is vitally concerned. It is a law, therefore, in the determination of which, manifestly, there should be brought representation from the various sections and parties of the country; and its construction, if the theory of our representative government be true, should not be in the main vested in but one of the circuit courts of the United States. At the present time 83 per cent of the customs appeals from decisions of the Board of General Appraisers, which is a representative body appointed from all sections and parties of the country, are decided by the circuit court for the southern district of New York, which is but one of 77 circuit court districts.

On appeal from the circuit courts the ultimate decision of over 90 per cent of the cases appealed to circuit courts of appeal are decided by the circuit court of appeal for the second circuit, which is made up of judges from the States of New York, Vermont, and Connecticut, principally New York—3 of the 46 States of the Union—and who by law are required to be residents of those States before they are eligible to membership in that court. Either as fact or as precedent these courts decide finally over 85 per cent of the customs cases on appeal, and these precedents control the remaining percentage of such decisions.

It is but fair, just, and right, it is in harmony with representative government, that in the construction of a law in which every decision rendered affects the whole country and every citizen and section of the country, and ofttimes different sections differently, and in which the whole country and every citizen is interested from the standpoints of development, growth, and taxes, should be finally construed by a judicial body drawn from the entire country and not a fractional part thereof. This is true as a matter of governmental principle without the least reflection upon any member of the courts mentioned, all of whom are jurists of well-known learning in the law and profound in their decisions.

This amendment is for that reason drawn upon broad principles, with a sufficient personnel (5) that all sections of the country can be represented therein and in the determination of these questions that concern alike the East, the West, the North, and the South.

While it is true that the representative theory of government should be observed in all of our institutions of national concern, including the judiciary, it is of equal importance that in constituting these institutions care should be had that uniformity of administration of the laws be preserved. If representative government results in lack of uniformity, the very purpose of the government fails. Under the previous system of appeals in customs cases, the ultimate authority being the different circuit courts or circuit courts of appeal throughout the United States, a great lack of uniformity of decision resulted. In consequence the tariff law, which is the law of the whole

country, has oftentimes received at different ports different interpretations according to the circuit court or circuit court of appeals of that jurisdiction, and consequently different administration.

The act of 1908, while an improvement of the customs administrative law in many particulars, in this respect was inferior to the law as previously existing. Under the amendments of 1908 there exists a greater diversity of possible final authority. Where final decision was previously ordinarily vested in one of nine circuit courts of appeal, such now is vested in nine circuit courts of appeal, 29 circuit judges, 90 district judges, and 9 Supreme Court justices, all of whom are qualified to sit as circuit judges of possible final authority in customs cases, not to mention the territorial judges and those of the District of Columbia. Already the books contain numerous conflicting decisions of customs cases decided by coordinate circuit courts and circuit courts of appeal sufficient to indicate the probabilities of confusion resulting under this law. In many cases previously existing the objectionable results were mitigated by writs of certiorari from the Supreme Court of the United States, but in many that court declined to interfere and conflicts still exist.

ZANTE CURRANTS.

The circuit court in California held that the provision for Zante currants in the tariff act of 1894 was generic and not limited to the product of the island of Zante. (In re Wise, 73 Fed. Rep., 183.) The circuit court of appeals for the second circuit (New York) subsequently held the contrary on the basis of a new record. (Hills *v.* United States, 99 Fed. Rep., 264.) The importers won. It is understood that they feared the result of an appeal in the ninth circuit (California), by reason of the local prejudice due to the interest of currant growers on the Pacific slope, which was supposed to have colored the testimony of the witnesses who testified in the first case, even though no bias were imputed to the court. Four years' delay was caused by this additional litigation.

SILK-WOOL PROVISO.

Paragraph 391, tariff act of 1897, relates to "all manufactures" wholly or in chief value of silk, with a proviso that "all manufactures, of which wool is a component material, shall be classified and assessed for duty as manufactures of wool." Judge Townsend, in the circuit court for the southern district of New York, held that this proviso applies only to said paragraph, or at most only to the silk schedule in which it is found. (Slazenger *v.* United States, 91 Fed. Rep., 517.) Judge Lacombe, sitting in the same court, has recently held the same. (Woodruff *v.* United States, T. D. 29645.) The circuit court of appeals for the eighth circuit has held that it extends not only beyond the paragraph in which it is found, but into other schedules. (United States *v.* Scruggs, 156 Fed. Rep., 940.) The circuit court of appeals for the first circuit held that it did not extend beyond that paragraph, observing that "the words 'all manufactures' found in the proviso should be held to be only a repetition of the same words with which the paragraph begins." (United States *v.* Walsh, 154 Fed. Rep., 770.) But the same court has just followed the decision in the eighth circuit in the Scruggs case without explaining the inconsistency further than to observe that in a doubtful case they would follow that decision as a matter of comity, even though not concurring "in all the reasoning of the opinion leading up to the final conclusion." (Ballot *v.* United States, T. D. 29766.)

SAKE.

The circuit court of appeals for the second circuit (New York) has held the Japanese beverage known as "sake" to be dutiable as an unenumerated article under section 6, tariff act of 1897. (United States *v.* Nishimiya, 137 Fed. Rep., 396.) The circuit court of appeals for the ninth circuit (California) held that it was dutiable as still wines by similitude. (United States *v.* Komada, 162 Fed. Rep., 465.) As in the Zante currant litigation this conflict was based on a different record. The matter is now pending in the Supreme Court.

STRUNG BEADS.

Beads temporarily strung were held by the circuit court of appeals for the seventh circuit to be dutiable as beads not strung. (United States *v.* Buettner, 133 Fed. Rep., 163.) The contrary was held by the circuit court of appeals for the second circuit in two cases, one decided before and one after the Buettner decision. (In re Steiner, 79 Fed. Rep., 1003; Frankenberg *v.* United States, 146 Fed. Rep., 704.) The Supreme Court affirmed the latter tribunal. (206 U. S., 224.) The first decision of the board on this issue seems to have been in 1891. (G. A., 876; T. D. 11885.) The litigation, persisting through three tariff acts, ended in 1907.

SIMILITUDE.

The circuit court of appeals for the second circuit (New York) held that where an importer wishes to rely upon the operation of the similitude clause to bring an unenumerated article under some particular classification he must so allege in his protest. (Hahn *v.* Erhardt, 78 Fed. Rep., 620.) The circuit court of appeals for the third circuit (Pennsylvania) held the contrary without discussing the point. (In re Guggenheim, 112 Fed. Rep., 517.) The Supreme Court refused to grant a writ in the latter case. Subsequently the same question came before the circuit court of appeals for the second circuit, which adhered to its decision in the Hahn case. (United States *v.* Dearberg, 143 Fed. Rep., 472.)

CONTINUOUS CUSTOMS PRACTICE.

There is a well-established rule that a long-continued customs practice with reference to the dutiability of merchandise is a cogent reason for continuing that practice, especially if it arose under a prior act. The circuit court of appeals for the first circuit (Massachusetts) has given this rule a paramount position not recognized by other tribunals, stating that it "is of the highest authority and masters all others." (Brennan *v.* United States, 136 Fed. Rep., 743; United States *v.* Proctor, 145 Fed. Rep., 126.) Extreme application of this rule was given where the customs practice had existed for but five years under the present act. (Burditt *v.* United States, 153 Fed. Rep., 67.) Passing over this application of the rule, it is desired to make the point that no other court of equal authority has followed the first circuit more than a very short distance along this path. Numerous cases have arisen elsewhere since decisions cited were rendered in which the element of continuous customs practice has been present as strongly as in the Burditt case and has been urgently brought out on argument. But invariably the decision has been on other grounds.

SUFFICIENCY OF PROTEST.

The circuit court of appeals for the seventh circuit departed from a long line of decisions holding that the importer's protest must indicate the statutory provision relied upon. (United States *v.* Shea, 114 Fed. Rep., 38.) In this case merchandise was classified as tissue paper, which should have been classified as paper not specially provided for. The importers' sole contention was that it was classifiable as manufactures of paper. The court held that the protest was sufficient. But two years later the circuit court of appeals for the third circuit followed the earlier rule in two well-considered opinions. (United States *v.* Knowles, 126 Fed. Rep., 737; United States *v.* Bayersdorfer, 126 Fed. Rep., 732.) These cases were later followed by the circuit court of appeals for the second circuit. (United States *v.* Fleitmann, 137 Fed. Rep., 476.) Such questions come before the Board of General Appraisers with great frequency, and the matter is left in utter conflict at the different ports.

TEA COVERINGS.

The question of whether certain containers are usual or unusual coverings for tea was given opposite solutions by the circuit court for the northern district of California and the circuit court for the northern district of Illinois. (Jackson *v.* Siegfried, 126 Fed. Rep., 837; Collector *v.* Jaques, not reported.) The Board of General Appraisers found it difficult to harmonize these decisions in deciding later cases, but finally concluded to follow the California decision in California cases and the Illinois decision in Illinois cases. (G. A. 5298–5299, T. D. 24288–24289.) No other course is open, and results in different practice at different ports.

SECTION 7.

Section 7, tariff act of 1897, provides that "if two or more rates of duty shall be applicable to any imported article, it shall pay duty at the highest of such rates."

The circuit court, southern district of New York, held that this applied to merchandise covered by two provisions, one of which imposed an ad valorem rate and the other a specific rate. (Meyer *v.* United States, 124 Fed. Rep., 293.)

The circuit court of appeals for the first circuit held to the contrary five years later, observing:

> It can not reasonably be maintained that the intention of Congress was that the same article should be interchangeably classified under these different paragraphs according to changes in the markets.

The court concluded, therefore, that section 7 could not apply to such a case. (Loggie *v.* United States, 137 Fed. Rep., 813.)

DECALCOMANIA LABELS.

In October, 1904, the circuit court in Chicago held decalcomania labels to be dutiable as labels printed in metal relief. Wakem & McLaughlin *v.* United States, T. D. 25827.) In February, 1908, the circuit court in Philadelphia held that precisely similar goods were dutiable as surface-coated paper

printed. (United States *v.* Hempstead, 159 Fed. Rep., 290.) The result in consequence of these decisions is a positive conflict and different enforcement of the law at the two ports.

ENTIRETIES—NEEDLECASES.

The circuit court of appeals for the second circuit has held that fancy needlecases filled with needles were dutiable separately from the needles, as though imported separately. (United States *v.* Dieckerhoff, 160 Fed. Rep., 449.)

The circuit court at Philadelphia held the same articles to be dutiable as entireties. (Wanamaker *v.* Cooper, 69 Fed. Rep., 465.)

This results in a conflict of final authority in these two jurisdictions.

ENTIRETIES.

The circuit court at Boston in 1908 held that card clothing for carding machines imported separately, but as a part of the same importation as the machinery upon which it was intended to be used, was dutiable as a part of the machinery and not separately. (United States *v.* Leigh, 157 Fed. Rep., 317.)

More recently the circuit court of appeals for the second circuit has held that automobile tires imported with the machines for which they were intended to be used, but not attached, were not dutiable as a part of the automobile. (Auto Import Co. *v.* United States, 168 Fed. Rep., 242.)

FERROCHROME.

The circuit court of appeals for the second circuit held that ferrochrome is dutiable as ferromanganese by similitude. (United States *v.* Roessler, 137 Fed. Rep., 770.)

The circuit court of appeals for the third circuit held the identical material dutiable as a metal unwrought. (United States *v.* Cramp, 142 Fed. Rep., 234.)

HARMONICAS.

Harmonicas are held to be dutiable by the circuit court at Philadelphia as musical instruments. This decision was unreported.

They are held by the United States circuit court for the southern district of New York to be dutiable as toys. (Borgfeldt *v.* United States, 124 Fed. Rep., 473.)

The importers won their contention in each of these cases, and an irreconcilable conflict of authority results.

DRAWN WORK.

Drawn work was held dutiable by Judge Maxey, of the circuit court for the western district of Texas, as embroidered articles. (Beach *v.* Sharp, 154 Fed. Rep., 543.)

Upon precisely the same record and precisely the same decision of the Board of General Appraisers the circuit court for the southern district of New York held contrary. (Simon *v.* United States, T. D. 29702.) This decision of the circuit court for the southern district of New York has been affirmed by the circuit court of appeals for the second circuit, and it is understood a writ of certiorari from the Supreme Court is to be applied for by the Government.

In addition to these many other conflicts between the different jurisdictions in the United States might be cited. These are sufficient to illustrate the vice of having different coordinate appellate authorities at different ports throughout the country, such as is provided by the existing law. Not only is it true that different rates of duty are assessed in accordance with the final authority of that jurisdiction upon merchandise by the customs officials within that jurisdiction, but other equally serious consequences follow.

The existence of such a diversity of jurisdictions having ultimate authority is but an invitation to litigation. It is a frequent vice under the present system that defeated litigants will seek another circuit to relitigate their cases already decided, in the hope of favorable decision. Customs lawyers and importers closely study the trend of decisions, and observing the tendency of the court of a particular jurisdiction and the full scope of the principles in every decision, which may be more favorable to their cause, make importations at that port and litigate their cases in that jurisdiction by reason of the supposed advantages arising from divergent views probably taken in earlier decisions.

Under the amendment of 1908 these opportunities will be multiplied. It is of the highest importance to the commercial community to have once for all settled the effect of the provisions of a tariff law. It is of equally high importance to one community that another community, by reason of more liberal decisions in that jurisdiction, should not enjoy special advantages in the importation of their merchandise.

No complete and harmonious adjudication upon this subject can possibly be attained except by the establishment of one tribunal of competent personnel, which shall once for all and for all communities, and finally, settle the interpretation to be put upon the law and the rate of duty intended by Congress. If there were no other reason supporting the establishment of this court, this reason alone would be sufficient.

Objection has been urged against the establishment of this tribunal because there would not be a sufficient number of cases to be determined to warrant its establishment. Regardless of the amount of labor to be performed by these judges, the securing of uniform decisions, of prompt decisions, the affording of ample consideration of these decisions would more than warrant the establishment of the court. It is of much greater importance to the country, and we should be more than concerned that our tariff laws are to be finally promptly construed by men qualified in every way to so construe them, with ample time for full investigation, discussion, and thorough consideration, than that five men in the government service might or might not be constantly employed. If only those offices are to be created and those duties performed in the government service which require constant desk application, but few of the higher places would be created, and the official blue book would be greatly condensed. There is a higher purpose in the interests of the whole people than that five men should be everlastingly occupied.

The records show, however, that the number of appeals coming before this body would be sufficient to keep five capable judges well employed. Due consideration of customs cases requires more than a research of the law. It often requires, when properly performed, a research into the sciences, into the arts, into the history of manufactures, into the methods of production, and into almost every manufacturing and producing process known to the civilized world. Not infrequently have courts commented upon the fact and the use of their outside knowledge in the decision of customs cases. For example, in the case of United States *v.* Roessler & Hasslacher Chemical Company (137 Fed. Rep., 771), Cose, circuit judge, took occasion to say:

> Having had occasion to examine recently the complicated process by which aluminum is produced, we are inclined to think that no better example of unwrought metal can be given.

Here is an instance where an eminent jurist found it necessary and did bring to the consideration of a customs case a fund of intelligence acquired upon the subject in a previous case (Electric Smelting and Refining Company *v.* Pittsburg Reduction Company, 125 Fed. Rep.).

Other instances may be cited. For example, in Sullivan Brothers *v.* Robertson (37 Fed. Rep., 778), Judge Lacombe, circuit judge for the second circuit, said:

> With regard to this general group of goods which we know, not only from the evidence in this case, but from our experiences in other cases, is a species of fabric, etc.

Proceeding to reach his conclusion not from the evidence in the case, but from studies of the evidence produced in other cases.

It goes without saying that in the proper determination of this class of cases it should be proved by the mere suggestion that their proper determination should involve study outside of the mere language of the law. And it is the purpose of the committee in the presentation of this amendment to provide a tribunal with sufficient salary to secure in the personnel of this court judges of high attainments and understanding and to clothe them with duties not such as would require the rushing through of cases similar to that followed in police and justices' courts, but to have ample opportunities in cases of small moment, as well as cases of large moment, to thoroughly investigate not only the law, but all the facts surrounding the same, that their decisions, when rendered, may be intelligent and sound. That much is due the industries of this country, and whatever might be the reasonable expenses, in the judgment of the committee, no expenditure could be better warranted than bringing into the final determination of customs matters, affecting all of the citizens in every community, men of intelligence, paying them a salary sufficient to warrant the devotion of a life to the service and clothing them with only such duties as would permit a thorough investigation of every subject presented to them.

The record of appeals from the Board of General Appraisers forms a fair estimate of the work that would be imposed upon this court, which, when compared with the duties imposed upon and performed by other courts, will show that any five men who may be appointed thereto will be well employed if they properly proceed to the performance of the duties assigned them by the statute.

Witness the proof of these statements in that there are now pending on appeal from the board in United States circuit courts approximately 842 suits; in the United States circuit courts of appeal, 75 suits. Of these, 558 are pending in the cir-

cuit court for the southern district of New York, while 68 of the 75 in circuit courts of appeal are in the circuit court of appeals for the second New York circuit.

These involve some duplicated appeals, which will be disposed of by one hearing and decision, but present a calendar, nevertheless, which suggests an imposition upon this circuit of cases which should be more ratably distributed throughout the circuits, or collected within a single special circuit where constant and exclusive attention could be given such important issues.

These figures are an accurate estimate taken from the official records as of date April 1, 1909. This record shows that of the 558 suits pending in the southern district of New York there are precisely 150 separate and distinct issues; that of the 68 suits pending in the circuit court of appeals for the second circuit there are precisely 30 separate and distinct issues. There are 8 issues pending in the circuit court of appeals for the second circuit that are also pending in the circuit court for the southern district of New York. Subtracting these from the total, we have 172 separate and distinct issues pending in that jurisdiction, and a total of 626 suits.

The exact tabulation, made up of the official statement of appeals pending in United States courts in customs cases, issued by the Treasury Department on April 1, 1909, shows a total of 842 customs cases pending in the different federal courts. The total number of separate and distinct issues is 303.

The total number of issues that are pending at the same time in a lower and a higher court of the same jurisdiction, or in a court of coordinate jurisdiction, is 60. Deducting these duplicates from the total of 303 gives 243 separate and distinct customs issues pending in federal courts of date April 1, 1909. This is a most conservative estimate. It does not include separate and distinct issues of fact, of which there are many pending in these courts, nor does it include the different questions of law and fact involved in the so-called "Petroleum Products" and "Sugar Test" cases, which oftentimes require extensive investigation into the treaty provisions of different nations and the facts involved in the application of these treaties.

This is a sufficient number of cases to be well considered by any court of five judges. The number of appeals per annum for the past four years from the Board of General Appraisers is represented by the following tabulated list, which also indicates the moment of such cases:

Year ending June 30—	Circuit court.		Circuit court of appeals.		Supreme Court.	Total.
	Argued.	Not argued.	Argued.	Not argued.		
1905	154	131	36	12	1	334
1906	94	292	50	18	3	457
1907	121	161	44	15	5	346
1908	107	737	50	10	1	911

In view of the early enactment of a tariff law, it is fair to assume that the number of appeals arising hereafter would be much greater than this. Particularly would this be true in the presence of a court where early final decision could be had. The greater expedition given to litigation the greater the desire of the party actually in interest to try out his rights in the court of last resort. The current business of the court would be not less than 250 separate issues of law.

A comparison of the appeals pending in the different courts is instructive.

The Supreme Court of the United States, consisting of nine justices, from 1890 to 1908, inclusive, disposed of, on an average, 400 cases per annum. This included decisions upon extraordinary and other process. This would be an average of approximately 45 decisions per justice. The reports of that court show many of these decisions to be rendered without opinion. While it is undoubtedly true that the questions presented to the Supreme Court are much more weighty than those that would be presented to the proposed court, nevertheless many customs cases are finally adjudicated in the Supreme Court, and many of them rank in importance far ahead of the average case decided by the Supreme Court.

The respective United States circuit courts of appeal during the fiscal year ending June 30, 1908, disposed of upon an average less than 135 appeals each. They were as follows: First circuit, 75; second circuit, 281; third circuit, 114; fourth circuit, 52; fifth circuit, 123; sixth circuit, 135; seventh circuit, 87; eighth circuit, 203; ninth circuit, 139; total, 1,209. The reports of the Attorney-General show that this was an extraordinary number of cases decided by those courts, and greater than in any preceding year.

The court of appeals for the District of Columbia, an appellate court of three judges, paid an annual salary of $7,000 each, disposed of the following matters during the years 1902 to 1908, inclusive: 1902, 149; 1903, 131; 1904, 131; 1905, 175; 1906, 176; 1907, 169; 1908, 185.

It would seem quite as important that a tribunal of the same dignity and standing and comparatively the same expense should be accorded to ultimately determine all appeals in customs cases, many of which involve millions of dollars of refunds from the Government, and each of which involves the substantial rights of the great manufacturing and importing interests of the country, and the ultimate continuance of some of these great interests. The work afforded the court therefore would not only be of the highest order, but sufficient to keep at least five qualified judges busy.

The Senate amendment proposes the immediate transfer to this court of all pending issues in customs cases. The court therefore would upon organization be confronted with from 150 to 250 important issues for determination. Its organization would be immediately upon the enactment of a new tariff law. The number of issues arising thereunder would be numerous. The number of appeals from decisions of the board upon these many subjects would doubtlessly be greatly in excess of 250 per annum. Indeed, the new appellate machinery would inevitably cause many merchants to try out their cases in the court of final resort who otherwise are unable to do so, or now hesitate to do so by reason of the extensive and circuitous procedure.

It seems, therefore, perfectly assured that the contemplated court would be immediately concerned with a sufficient number of cases to occupy it continuously.

Some idea of what can properly be considered by an appellate court may be gleaned from the letter by the judges of the circuit court of appeals for the second circuit addressed to the Finance Committee, April 22, 1908, previously read. In that letter it is stated, after reviewing the fact that the number of appeals annually considered by that court had risen from 157 to 285 in the course of twelve years:

> When the calendar did not present more than 160 cases to be disposed of, the circuit judges were able to hold sessions of three weeks for the hearing thereof with recesses of two weeks each between for the disposition of the same. Since the great increase of the past three years the recesses between sessions, during which the opinions have to be written, have necessarily been reduced to one week each. What the result might be if the present calendar of 285 cases were suddenly increased by adding 200 additional appeals it would be difficult to forecast.

The Supreme Court, deciding 45 cases per justice per annum on an average, when it adjourned this session was 468 cases behind. It may be stated to be the uniform rule that the different circuit courts and circuit courts of appeal throughout the United States are behind in their work.

Estimating the proper amount to be performed by appellate courts, and measuring the same by the work performed by the different courts of federal jurisdiction throughout the United States, it may be properly said that no such court should undertake the decision of more than from 35 to 50 cases per judge per annum. Deducting the necessary vacation time, this requires each judge to consider and write opinions in at least one case per week.

Many of these customs cases require a much greater length of time than that for thorough investigation. In fact, there has never been a year during the past quarter of a century when at least 20 customs issues per annum have not been raised, the proper consideration and determination of which would well command the combined study and legal acumen of any five men for at least two weeks, and many of these for longer periods of time.

No greater number of cases than that should be imposed upon any appellate tribunal for thorough and deliberate consideration, consultation, and decision.

There should be no question in this case that a sufficient number of cases would be afforded to occupy these judges their entire time. If any apprehension should be aroused in this instance, it would rather be in the opposite direction, as to whether or not the number of cases likely arising within the jurisdiction of this court would not be such as to require additional force.

The expense of the proposed court, as compared with the benefit received therefrom, is inconsiderable. The maximum expenditure for the court as provided in this amendment will be not greater than $75,000 per annum.

Measured against this expense, we are to consider the following results:

1. The time of ultimate decision in customs cases would be reduced to within one year, instead of as at present requiring two and one-half years or more. This estimate of time does

not include the time required in those cases that are reviewed in the Supreme Court of the United States.

This would represent a saving to the consumers of the country on an average of at least $650,000 per annum. This proposition is capable of mathematical demonstration.

Nor does this take into account the fact that those cases in which the heaviest refunds are paid uniformly have extended over a much longer period of time than two and one-half years, as has been shown by the list of important cases given.

It must constantly be borne in mind that these large refunds accumulate in proportion to the delay in the decision of the case. Protest is made upon each shipment of the merchandise the subject of suit. Each shipment brings to the importer, his counsel, and his broker a proportion of these refunds. If, therefore, the time of decision is reduced to one-third by the establishment of this tribunal, which undoubtedly will be the case, the amount of refunds in these cases will be reduced to one-third. As a matter of fact, it will be reduced much more than that because of the fact that the heaviest refunds are paid in cases extending over a much longer period of time than two and one-half years, as has been conclusively shown.

The importer, his broker, and his attorney would, therefore, in these cases, by reason of prompt decision, collect from the consumers of the country at most but one-third of what is collected under the present system.

Some idea of what is involved in this may be ascertained from a statement of the refunds paid in customs cases under the Dingley law. I here submit a statement, prepared by the Treasury Department, not of estimated refunds, but of actual refunds paid under the present law.

The aggregate from 1898 to 1908 was $18,295,401.48. To save question, I will deduct from this the sum of $7,191,335.71, paid by reason of refunds in the Hat Trimmings and Tobacco cases arising under previous laws. The net refunds, therefore, under the Dingley law for those years amounted to $11,104,065.77. This is an average of over $1,000,000 a year paid in refunds in customs cases. As a matter of fact, they will amount to very much more than that sum. The most conservative estimate by the auditor at the custom-house at New York and those who have made calculations in the different cases now pending in the courts is that during the current and ensuing year the refunds will approximate $3,000,000.

I base this statement upon the proposition that every case decided in that eleven years would be decided precisely as it has been decided; that there would be no change in any construction of the law. Taking that as a basis, the refunds for the eleven years, and undoubtedly for the years ensuing, will run over $1,000,000 per annum. These refunds accrue from cases the ultimate determination of which required at least two and one-half years, and therefore grow out of the protests filed upon every shipment of the merchandise involved during that period of time. As a matter of fact, the more important ones run over a much greater period of time. During this period of time the high and unlawful rate of duty is levied on these goods, paid by the importer, and collected from the consumer.

There is no escape from the fact that these refunds were, perforce of this dilatory system, collected out of the pockets of the consumers of the country by the importers of the country who sold them the merchandise. Upon settlement of the case these refunds were not distributed amongst the consumers of the country, but this vast sum of money, each year collected out of the consumers, is paid into the pockets of a certain few.

It might be added here that one large, well-established, and well-known house in New York, recognizing the moral features of this situation, makes it a rule that all refunds in customs cases accruing to that house by reason of decisions are distributed among the houses purchasing the merchandise; but this is the one exception that demonstrates the rule.

It seems perfectly plain that where the Government can disburse the sum of $75,000 per annum of moneys collected under the tariff law for the constitution of a tribunal that will insure prompt decisions in these cases, if nothing more, and thereby save to the consumers of the country $650,000 per annum, which would be unlawfully collected under the same, it is absolutely warranted without any other reason supporting it. The taxpayers pay $75,000 to save being taxed at least $650,000.

2. The vast number of protests being constantly filed in the different custom-houses throughout the country and forwarded to the Board of General Appraisers for decision has necessitated great increases in the clerical force of the different custom-houses and overtaxed the clerical force of the Board of General Appraisers in filing, docketing, and otherwise giving proper clerical attention to these protests, not to speak of the handling of them a second time throughout all the processes to and including reliquidation when they are finally disposed of.

These protests, as already shown, now amount in classification cases to approximately 65,000 per annum. If the length of time of appeal were shortened to one-third, the number of protests would of necessity be reduced to one-third, and in consequence there would be great saving in the clerical force necessary to handle these protests.

At different times during the past years the enormous number of these protests filed each day, the making of proper returns thereto by the appraising officers, their proper docketing by other clerks, the taking of samples, and doing of other attendant clerical service have consumed the time of so many clerks of the different departments in the customs service of the Government that additional temporary forces of considerable numbers have been required. A reduction in the number of these protests would result necessarily in a great reduction of the work to be performed in the custom-houses and appraising offices of the country, thereby effecting a material saving of the public revenues.

It has been shown that from time to time the accumulation of cases in the United States courts at New York has necessitated the addition to that district of additional judges. The enactment of this law will undoubtedly so relieve the jurisdictions of the southern district of New York, the district of Massachusetts, the eastern district of Pennsylvania, and the northern district of Illinois to that extent that, where under existing conditions an increase of the judicial force of those districts would be absolutely necessary, the passage of this bill will reduce that necessity.

The reduction of the labors of those courts alone would undoubtedly in the next ten years enable them to handle the otherwise accumulated work to that extent that the actual saving of judges would be at least five in number. So that the passage of this bill means but the earlier appointment of judges that would later be required and the assignment to them of special jurisdiction.

In that view, therefore, it can not be regarded in any sense as more than the inevitable expenditure of what in time will be necessary.

The addition of $75,000 to the expenses of collecting the revenues would be such an insignificant sum as could hardly be estimated in percentage. The cost of the collection of the revenues for the fiscal year ending June 30, 1908, was $9,580,626.25. The addition thereto of this expense would be so insignificant as to be incalculable.

This country already has the most complete administrative system of the world. Here the importer is given more opportunities to try out the merits of his protest than in any other civilized country. In Germany, France, Austria, Holland, Belgium, England, and every other country the administrative laws of which have been carefully examined, many of which countries have made protests against the administrative features of our customs laws, nothing like the opportunity of hearing given in this country is afforded. In those countries such things as hearings in customs cases do not exist in any case. The decision of customs matters is left entirely to the caprice of the particular customs officer, without any opportunity of hearing, except filing a written statement, and in many cases this is not afforded.

When, therefore, the Congress has provided, as is provided in this system, the opportunity of review, first, by the collector, second, by the Board of General Appraisers, third, by the court to be constituted of competent men, opportunity of review is afforded in this country such as is afforded in no other country of the civilized globe. And the complaint of the importer or any other person who may or may not be interested in the features of this law that the three reviews given should be made five is asking a most unreasonable result. In no other class of cases, civil or criminal, in this country or in any other, is the number of reviews afforded a litigant that is afforded in the present system of appeals in customs cases. The man who enters a case, civil or criminal, in any of the courts of federal jurisdiction has no right to review by more than three tribunals, including the Supreme Court of the United States; and that there should be accorded to one special class of litigants the opportunity of review in five tribunals is a travesty upon justice and beyond a reasonable demand.

The Supreme Court of the United States and the expressed will of all interested parties has ever been that the adjudication of all litigated questions ought to be so provided for under the law that swift justice may be done. The Supreme Court in well-considered cases has emphasized the fact that the collection of the public revenues should not be made to depend upon any

system which would result in great delay; otherwise the revenues can never be properly collected.

It is not a little strange that the proposition of the expense of this tribunal should be urged against its establishment by those who are particularly concerned in the collection, by virtue of the present dilatory procedure, from the taxpayers of this Government and drawing out of the Treasury almost ten times the cost of this tribunal per year. The $75,000 paid by the Government is paid by the federal taxpayers of the country. If the $75,000 is not expended by them in the establishment of this court, ten times that amount will be paid by the same taxpayers into the pockets of a certain few, collected in the same manner under the same law, because the court is not established. So it is for the federal taxpayers of the country to decide whether they will establish this court and pay but $75,000 per year, or whether they will refuse to establish this court and pay in lieu thereof $650,000 per annum. I think there can be no choice, and the argument of expense against the establishment of this court has not the slightest foundation in fact.

Aside from the question of overcrowded courts, aside from the question of whether or not a single decision would be changed, this amendment is warranted and demanded upon the grounds that it will shorten the life of customs appeals, relieve the customs service of much unneccessary labor, and save the consumers of the country over $650,000 per year.

The Senate amendment fixes the salary of the judges of the proposed court at $10,000 per annum. The committee is of the opinion that in order to secure judges of requisite ability and their continuance upon this tribunal that salary at least is absolutely necessary.

The temptations by reason of extraordinary fees made in this line of practice, as already stated, are a great inducement to lawyers once experienced in the customs law to leave official positions and engage in the practice of the law, where it is no uncommon thing to make fees of from $30,000 to $50,000 per year.

The salary of the members of the Board of General Appraisers is $9,000 per annum. The salary of the collector of customs at New York is $12,000 per annum. The salary of the United States district attorney at New York is $10,000 per annum. The salary of the postmaster at New York City is $10,000 per annum. . The salary of the judges of this court should be higher than that of the lower reviewing tribunal from which appeals are taken.

The location of the court in the city of New York, where the expenses of living are much higher than elsewhere, requires that the salary be at least that sum. It is exactly the same as that paid the members of the Interstate Commerce Commission.

The higher and increasing cost of living is expressly recognized by the laws of the State of New York constituting the supreme court of that State, which has 26 judges in the boroughs of Manhattan and the Bronx. The salary of these judges is $17,000 per annum in the city of New York, while elsewhere in the State they receive a salary of $7,500 per annum.

The number of district municipal judges in New York City was increased January 1, 1908, from 13 to 42, and their salaries raised from $6,000 to $8,000 per annum by reason of the increased cost of living.

The judges of the city court of New York, whose number has just been increased from 7 to 10, received at the same time an increase in salary from $10,000 to $12,000 per annum.

The two surrogate judges of New York City receive $15,000 each per annum.

The judges of the court of general sessions of the city of New York, five in number, have lately been increased in salary from $12,000 to $15,000 per annum.

No body of men is better capable of measuring the proprieties of salaries in the city of New York than the legislature of that State, and this is its estimate of the requirements to obtain judicial talent.

There is no place wherein pressure is so great, by reason of opportunities in the practice of law, as in the customs law as practiced in that city. Hence it is absolutely necessary, if men of suitable ability are to be maintained upon this court, that a salary of at least $10,000 per annum be paid. The committee, in fixing this salary, deemed it the minimum that would obtain and retain men of suitable ability upon the court.

The fact that the United States federal judges receive a less salary is no argument against the fixing of this salary properly at the outset, but an argument that the judges of the circuit and district courts should receive higher salaries, a fact which has received the approval of the committees of Congress, of the House of Representatives, and the united support of the press throughout the country.

The necessary counterpart of the Senate amendment for the earlier and better determination of customs cases is the amendment providing for the government counsel's force. This amendment provides for an assistant attorney-general, at a salary of $10,000; a deputy assistant, at $6,000; and three other assistants, at $5,000 each; aggregating $31,000.

Under the present law that force consists of a chief counsel at $5,000, three assistants at $3,000 each, and three other assistants at $2,500 each, making an aggregate salary roll of $21,500. The clerical force in neither case is enumerated.

Under the present system of prosecution of customs appeals, they are attended in the first instance by the solicitor of customs before the Board of General Appraisers and his force. On appeal to the United States circuit courts and circuit courts of appeal, they pass out of his hands entirely and are prosecuted by the district attorneys for the respective districts. On appeal to the United States Supreme Court or on writ of certiorari they pass out of the hands of this office and are taken up by the Attorney-General or his assistant.

In this gamut of prosecution the handling of the cases on behalf of the Government changes hands three times. Upon the other hand, the handling of the cases by the importers' counsel is done by the same counsel before all these tribunals. It seems hardly necessary to suggest that the constant change of counsel, which no man in business would undertake—three times in the ultimate prosecution of a case—is a system the vice of which can not be more emphasized than by its suggestion. In the opinion of the Finance Committee, the prosecution of these cases from their inception before the board to their conclusion in the Supreme Court should be under the same official corps, who acquire a familiarity with the witnesses before the board, what is necessary to make it a complete case, and who prepared their case for prosecution to the Supreme Court. There should be no change of horses in the middle of the stream. Experience has demonstrated that it is a matter of the greatest importance that the same attorney should be intrusted with the Government's cases from the beginning to the end, and that these attorneys should possess greater ability in this line of work than can be obtained at the salary now being paid.

Customs law is largely a law unto itself and involves many intricacies with which lawyers in the general practice are not familiar; and there are but very few district attorneys who have had any experience of consequence in customs cases. Outside of the southern district of New York, the eastern district of Pennsylvania, and the district of Massachusetts the district attorneys have comparatively no familiarity with this class of cases. The result is that the preparation of many customs cases on behalf of the Government has been very imperfect, salient points have been overlooked, waivers have been made, and many questions of vital importance have been decided against the Government when full development of the facts would have resulted in contrary holdings. Further, it is well known that the decision of the lower court is presumably correct, and when a case is lost therein as a result of its not being properly presented, an affirmance by the higher court often follows solely on account of this presumption. It is very important, therefore, that a case be well tried, as well as prepared for hearing, in the lower court. In fact, if a lawyer of inferior talent is to appear anywhere in the progress of the case it is better for him to appear in the appellate court, because such court is inclined to be controlled by the decision of the court below. The lawyers take time to make a thorough and independent examination of the questions presented. It is needless to say that the importers always have on hand in every stage of the proceedings counsel exceptionally skilled in this line of practice and who receive for their services large remuneration.

Many of the long delays in final decision in customs cases will be found to rest in imperfect records, insufficient testimony, or specifications of appeal. The latter are now drawn by the collector's attorney, the case first presented by the solicitor of customs and later by the United States district attorney. Any defect in the record will and has often resulted in years of delay and consequent injustice. If the whole of these duties were confined to one office, such would be much less likely to occur.

The designation of the attorney in charge as Assistant Attorney-General, and payment to him of a salary of $10,000 per annum, as provided in this bill, will, it is believed, enable the Government to secure and retain a lawyer learned in the customs law to look after its interests in all customs cases. This salary is the same as that paid to the United States attorney at New York, where most of the customs cases arise, and is not more than is frequently paid in a single case to the counsel for importers.

The salaries of the Deputy Assistant Attorney-General and the other assistants are fixed at amounts which are deemed sufficient to secure and retain attorneys skilled in the customs law and decisions, and qualified to assist the Assistant Attorney-General in the preparation and trial of cases in any and all of the courts having jurisdiction.

This amendment involves an added expenditure for this office to secure these results of $9,500, which is an insignificant sum compared with the results to be obtained.

The Congress should not overlook the fact that if men of ability are to be retained in this line of practice for a length of time longer than to school them in the customs law, higher salaries than those now being paid must be paid. The customs lawyer in New York who can not make $10,000 per annum is one of exceedingly poor ability. It has been the experience of the Government that as rapidly as counsel become trained in the office of the solicitor of customs they go out into the practice of the customs law and often make ten times the salary paid in that office. Almost all of the leading customs lawyers of New York to-day are men who received their training in the customs service and passed out of it either from the solicitor of customs' office before the Board of General Appraisers, or some capacity in the Board of General Appraisers or the United States district attorney's office. It has been said, and it is known to be true, that some of the principal firms in this business in New York make from $30,000 to $50,000 per year for each member.

In view of these opportunities the Government can not expect to retain in its service men who are efficient and able to cope with lawyers particularly skilled in that line, whose learning was afforded them in government capacities. If, therefore, it is the purpose of the Government to build up a corps of efficient government attorneys and retain them in the service, who have the necessary ability and understanding of the law to fully represent the Government in these cases, where they are opposed by men of eminent ability and learning in this branch of the law, salaries commensurate therewith must be paid. If it is the purpose in the future, as in the past, to only educate men at the Government's expense who will then go into private practice to defeat the Government, lower salaries should be paid.

No less a corps would be able to cope with this work. There are three coordinate Boards of General Appraisers sitting at all times. There must be one assistant before each of these three boards at all times. If these cases are to be prosecuted by this office into the higher courts, as the Finance Committee believes should be done, there should be at least one assistant who could take charge of these cases.

The two proposed amendments constituting the court of customs appeals and enlarging the office of the Solicitor for the Treasury Department, classing it in the Attorney-General's office, adjust themselves one to the other. It could not be expected if these appeals were to be heard at many different ports throughout the country at the same time that any force in the government counsel's office would be sufficient to proceed to the different ports and try the different cases. The stationing, however, of the court and this corps of attorneys at the same point, to wit, New York, where the case can be prosecuted from its inception to its conclusion before the board and all courts of appeal, and where the government counsel's force will be in close contact with the court, and where the same attorney under the supervision of an assistant attorney-general to be in charge there can prosecute the case from commencement to conclusion, will result, it is believed by the committee, in a great saving of expense in these prosecutions and an infinitely better service.

Both the board and the court being stationed at the same point, there would be no possible delay in continuances on the grounds of attendance in the other tribunal, no expense of travel between them, and complete daily supervision by the chief officer in charge of each case from inception to conclusion.

Moreover, we should not lose sight of the fact that the creation of this office and the enlargement of its prerogatives and the betterment of its force will withdraw from the United States district attorneys' offices at New York, Philadelphia, Boston, and Chicago a considerable branch of the business of those offices. In consequence, necessary additions to those offices, which will inevitably have to be made if the accumulation continues in these offices, will be avoided. This measure forestalls the necessity of that and affords more time for the consideration of the constantly increasing work of these offices, and at the same time affords an infinitely better system of prosecution of customs appeals. In the four offices named there are five deputy district attorneys, whose time is almost exclusively given to customs appeals. The relief that this bill will afford upon the strain of those offices, which in recent years has been great, is an added reason for the passage of this amendment. Therefore, the moneys expended in this way will not only bring about a most desirable service, but result in an ultimate economy in the government expenditures.

It is the purpose of this bill to create a tribunal the jurisdiction of which will take the place of, and consign to its jurisdiction in all customs cases, that now covered by the United States circuit courts and circuit courts of appeal and in part the Supreme Court. The amendment is framed upon the lines and carries with it the salary which will bring into this court and retain men as judges of high legal attainments who will be amply paid and can afford to bring to these important questions such consideration, legal talent, and investigation of the arts, sciences, and all subjects relating thereto as will result in decisions profound, speedy, and equitable.

The committee has not concerned itself with numerous reports and insinuations as to the personnel of the court. The committee feels that the appointment of the judges of the court being vested in the President of the United States, where it rightfully belongs, he can be trusted to name such a personnel for the court as will be able, fair, and just to all parties concerned, and carry out the intent and purposes of the Congress. The committee has no reason to question the attitude of the President, and has full confidence in his integrity and fairness, and for that reason does not deem the matter of the possible personnel of the court one of consideration for or against the enactment of this law. Any consideration of that phase of the matter for or against the bill must be based upon a lack of confidence in the integrity and capacity of the President to make selections for public office, which the committee does not entertain. It is assumed that in the performance of that duty there will be brought into the personnel of this court men of legal attainments sufficiently broad, experience sufficiently great, and that unqualified integrity necessary to the personnel of this tribunal. The committee believes there are available men just as learned, just as fair, just as competent in every wise as the judges now deciding these cases, and is perfectly willing to confide their selection and appointment to the President of the United States.

In creating a special tribunal for this class of cases the committee is in perfect accord with all tendencies of modern times. The development of the sciences, the wonderful extensions of the latitude of manufacture, the remarkable increase in sources of production, and the remarkable diversity of products of the mercantile world in recent times, and the consequent amplification of the law dealing with these various subject-matters, render it quite impossible for the single human mind properly considering them to cover the whole subject of commercial activities.

The tendency is decidedly to specialism. Where the legal profession not many years ago was devoted to the general practice of the law, in the larger commercial communities of to-day it is devoted to specialties. There are corporation lawyers who attend no other business. There are admiralty lawyers who attend no other business. There are criminal lawyers who attend no other business. There are lawyers whose sole business is devoted to certain mercantile pursuits and so on. This theory has already been carried into the judiciary. We have our special courts of equity and special courts of law. We have our probate courts, our admiralty courts, and our criminal courts.

In the exercise of the broad federal jurisdiction in many of the districts, like the southern district of New York, there are special judges peculiarly qualified in special branches of the law to whom are assigned that particular class of cases. There are there judges to whom are assigned criminal cases, specially qualified in that line. There are there judges specially qualified in admiralty cases, to whom are assigned cases in that line. And so on throughout all the system of federal jurisprudence. In the practice of customs law attorneys devote attention to this class of cases and do not take up, as a rule, other classes of law. They find that its principles are so intricate, the practice so broad, and the demand on their attention to properly perform these duties so great, that they can not devote themselves to other classes of law.

So in the constitution of the greatest tribunal of the land, the Supreme Court of the United States, there was appointed to that tribunal one justice (Justice Brown) deemed specially qualified in admiralty law. There was also appointed to that tribunal another justice (Justice White) who was specially proficient in civil law.

In the constitution of the different courts of the land there has been constituted a special tribunal for the hearing and determination of claims against the Government, known as the "Court of Claims," situated in the city of Washington.

Customs cases are not unlike these, for they are claims against the Government, and whatever warrant there was in

establishing the Court of Claims, there is the same warrant for the establishment of a court of customs appeals. These subjects are sufficiently intricate, important, numerous, and involve so many principles peculiar to customs law that full warrant is given for the establishment of a tribunal which shall devote itself solely to these subjects. And in the establishment of this special tribunal the Congress is following precisely what the commercial world has long since accepted to be the necessity of modern times. And in pursuance of the principle that prompts commercial enterprise to seek the lines of best advantage, the Congress deems itself, in conforming thereto, following the lines of the best interest of the Government.

It may be further added that under the present system final decision in most cases is had by a single circuit judge. As already shown, these decisions rendered by the Board of General Appraisers are passed upon by three members of the board rendering the decision, and the other members of the board present at New York check their approval or disapproval. The members of the board have before them the witnesses in the particular case; they are particularly familiar with the law pertaining to these cases; they have before them evidence of the facts surrounding the case, and, therefore, if men of moderate ability, should be able to make sound findings and proper legal conclusions. On appeal, these cases are reviewed by a single judge. In some jurisdictions this judge may be particularly qualified in customs law; in many other and the great majority of jurisdictions the judge passing upon the case has had but little experience in customs law. In most, if not all, the jurisdictions, the case falls into a court where other classes of law already are sufficient to occupy the entire attention of the court. It is in many cases presented by a district attorney having little or no knowledge of customs law. Under these circumstances it could not be possible that these cases could, in the limited time allowed and under all the circumstances, receive that due deliberation and consideration which their merit warrants.

Reviewing the entire situation in the light of results that have ensued in the past, the committee is of the opinion that for the final determination of this class of cases there should be established a court of men eminent in the law, fair and impartial in their decisions, sound in their conclusions, and that whatever expense might be incurred is fully warranted.

Table showing affirmances and reversals of customs appeals in all courts since organization of the board in cases prosecuted to circuit court of appeals.

CIRCUIT COURTS.

Year.	Argued.		Not argued.		Total.
	Affirmed.	Reversed.	Affirmed.	Reversed.	
1907-8	71	36	472	265	844
1906-7	81	40	114	47	282
1905-6	53	41	238	54	386
1904-5	84	70	79	52	285
1903-4	34	44	118	27	223
1897-1903	126	113	215	120	574
Total	449	344	1,236	565	2,594

CIRCUIT COURTS OF APPEAL.

Year.	B.A.C.A.	B.A.C.R.	B.R.C.R.	B.R.C.A.	Total.
1907-8	33	7	9	17	66
1906-7	22	3	19	15	59
1905-6	36	9	7	16	68
1904-5	17	3	10	18	48
1903-4	13	7	2	6	28
1897-1903	46	15	13	19	93
Total	167	44	60	91	362

"B. A. C. A." means "board affirmed, circuit court affirmed."
"B. A. C. R." means "board affirmed, circuit court reversed."
"B. R. C. R." means "board reversed, circuit court reversed."
"B. R. C. A." means "board reversed, circuit court affirmed."

	Board.	Circuit court
Affirmed	211	258
Reversed	151	104

The board had 211 affirmances and 151 reversals, although testimony was taken in 75 per cent of these appeals after leaving the board.

The circuit court had 104 reversals and 258 affirmances upon a full record.

Since the passage of the act of May, 1908, requiring that all testimony be exhausted before the board and a full record presented for the basis of their decision, the following was the result. None of these cases, for want of time, has reached any circuit court of appeals:

Appeals decided in circuit courts	23
Board affirmed	19
Board reversed	4

Since 1891, 15 appeals were passed upon by the board, the circuit courts, the circuit courts of appeal, and the final decision by the Supreme Court was as follows:

	Board.	Circuit courts.	Circuit courts of appeal.
Affirmed	11	8	5
Reversed	4	7	10

When it is borne in mind that after leaving the board additional testimony was introduced by one side or the other, or both, in the circuit court in most, if not all, of these cases, and that therefore the circuit courts and the circuit courts of appeal passing upon the cases had a complete record, whereas the board had an incomplete record, the record of the board for reversal in the Supreme Court of the United States is remarkable.

Customs cases pending in the circuit court, southern district of New York, April 1, 1909.

SUGAR—SETTLEMENT TEST.

Suit 3221. American Sugar Refining Company *v.* United States.
Decided by the board June 27, 1901. Record returned to circuit court September 26, 1901. Record printed by circuit court years ago. Not yet argued.

COUNTERVAILING DUTY ON SUGAR—DUTIABLE WEIGHT—SUFFICIENCY OF PROTESTS—SUGAR TEST.

Suits 4045–4048 and 4055. Core & Herbert *v.* United States (4045), W. H. Force & Co. *v.* United States (4046), Hills Brothers Company *v.* United States (4047), Rosenstein Brothers *v.* United States (4048), and Hills Brothers Company *v.* United States (4055).
Decided by the board May and June, 1905. Records returned to circuit court August, 1905. A test case on this issue, begun in 1898, went to the circuit court of appeals, second circuit. Then another was prepared before the board and taken to the Supreme Court. The importers lost in both cases.

PETROLEUM PRODUCTS—COUNTERVAILING DUTY.

Suits 3458–3460. United States *v.* Muller, Schall & Co. (3458), United States *v.* Alpers & Mott (3459), and United States *v.* Cook & Cokefair (3460).
Suit 4264. Charles Zoller Company *v.* United States.
Suits 4398–4410. United States *v.* Frank Bergeresch, Jr. (4398), United States *v.* Clearman Brothers (4399), United States *v.* Cook & Cokefair (4400), United States *v.* R. F. Downing & Co. (4401), United States *v.* Fiske Brothers' Refining Company (4402), United States *v.* J. W. Hampton, Jr., & Co. (4403), United States *v.* Lehn & Fink (4404), United States *v.* F. A. Marsily & Co. (4405), United States *v.* J. C. Metzger & Co. (4406), United States *v.* Napier Chemical Company (4407), United States *v.* Schoellkopf, Hartford & Hanna Company (4408), United States *v.* Smith & Nichols (4409), and United States *v.* Zinkeisen & Co. (4410).
Decided by the board July 23, 1906.
Suits 4416, 4802, 4811, 4839, 5038, 5082, and 5238 (252, etc.). United States *v.* Swan & Finch Company (seven cases).
Suits 4466–4469. Bayway Refining Company *v.* United States (4466), J. W. Hampton, Jr., & Co. *v.* United States (4467), L. Sonneborn's Sons *v.* United States (4468), and Bliven & Carrington et al. (4469).
Decided by the board July 26, 1906.
Suits 4789–4801 and 4803–4805. United States *v.* R. F. Downing & Co. (4789), United States *v.* Schoellkopf, Hartford & Hanna Company (4790), United States *v.* Schoellkopf, Hartford & Hanna Company (4791), United States *v.* Napier Chemical Company (4792), United States *v.* Clearman Brothers (4793), United States *v.* The White Tar Company (4794), United States *v.* Lehn & Fink (4795), United States *v.* O. G. Hempstead & Son (4796), United States *v.* F. A. Marsily & Co. (4797), United States *v.* L. Sonneborn Sons (4798), United States *v.* Zinkeisen & Co. (4799), United States *v.* Bliven & Carrington (4800), United States *v.* Charles Zoller Company (4801), Schoellkopf, Hartford & Hanna Company *v.* United States (4803), L. Sonneborn's Sons *v.* United States (4804), and Zoller & Co. *v.* United States (4805).
Decided by the board December 24, 1906.
Suits 4837–4838. United States *v.* F. A. Marsily & Co. (4837), and United States *v.* National Aniline and Chemical Company (4838).
Decided by the board January 30, 1907.
Suit 4892. United States *v.* R. F. Downing & Co.
Decided by the board February 26, 1907.
Suits 4937 and 4948. United States *v.* F. A. Marsily & Co. (4937) and United States *v.* L. Sonneborn Sons (4948).
Decided by the board April 10, 1907.
Suits 4938–4940. United States *v.* National Aniline and Chemical Company (4938), United States *v.* Smith & Nichols (4939), and United States *v.* Swan & Finch Company (4940).
Suit 4983. United States *v.* The White Tar Company.
Decided by the board June 20, 1907.
Suit 4997. United States *v.* L. Sonneborn Sons.
Decided by the board June 26, 1907.
Suits 5078–5081 and 5083. United States *v.* National Aniline and Chemical Company (5078), United States *v.* Lehn & Fink (5079), United States *v.* Aikman Ogg (5080), United States *v.* F. A. Marsily & Co. (5081), and United States *v.* L. Sonneborn Sons (5083).
Decided by the board October 3 and 4, 1907.

Suits 5150 and 5156. United States *v.* L. Sonneborn Sons (5150) and United States *v.* Lehn & Fink (5156).
Decided by the board November 27, 1907.
Suit 5189. United States *v.* F. A. Marsily & Co.
Decided by the board December 30, 1907.
Suit 5222. United States *v.* F. A. Marsily & Co.
Decided by the board January 30, 1908.
Suits 5260–5261. United States *v.* F. A. Marsily & Co. (5260) and United States *v.* Smith & Nichols (5261).
Decided by the board March 13 and 17, 1908.
Suit 5271. United States *v.* L. Sonneborn & Sons.
Decided by the board March 24, 1908.
Suit 5283. United States *v.* F. A. Marsily & Co.
Decided by the board April 22, 1908.
Suits 5293–5294. United States *v.* White Tar Company (5293) and United States *v.* Smith & Nichols (5294).
Decided by the board May 4, 1908.
Suit 5299. Smith & Nichols *v.* United States.
Decided by the board May 4, 1908.
Suit 5321. United States *v.* Swan & Finch.
Decided by the board June 25, 1908.
Suit 5323. United States *v.* Smith & Nichols.
Decided by the board July 11, 1908.
Suits 5358–5361. United States *v.* Clearman Brothers (5358), United States *v.* Smith & Nichols (5359), United States *v.* Lehn & Fink (5360), and United States *v.* Napier Chemical Company (5361).
Decided by the board September 24, 1908.
Suit 5390. United States *v.* Smith & Nichols.
Decided by the board November 17, 1908.
Suit 5415. United States *v.* F. A. Marsily & Co.
Decided by the board December 14, 1908.
Suits 5450–5453. United States *v.* F. A. Marsily & Co. (5450), United States *v.* Lehn & Fink (5451), United States *v.* White Tar Company (5452), and United States *v.* Napier Chemical Company (5453).
Decided by the board January 29, 1909.
Suit 5459. United States *v.* F. A. Marsily & Co.
Decided by the board February 9, 1909.
Suit 5469. Appeal from Abstracts 20850 and 20891 (T. D. 29644).
Decided by the board March 15 and 22, 1909.
The original case was decided by the board November 11, 1903. Record returned February 5, 1904. These cases have been continued in this court while test cases have been carried twice to the circuit court of appeals, second circuit, and once to the circuit court of appeals, first circuit. The Attorney-General is now considering whether to apply to the Supreme Court for a writ of certiorari.

ANTHRACITE COAL.

Suit 3514. Act of January 15, 1903.—The Perkins Company *v.* United States.
Decided by the board February 20, 1904. Record returned to circuit court May 4, 1904. Cause of delay unknown.

SHORTAGE OF SPIRITS, ETC.

Suits 3884, 3939, and 3950. Natale Licata *v.* United States (3884), E. La Montagne & Sons *v.* United States (3939), and Julius Wile, Sons & Co. *v.* United States (3950).
Decided by the board in 1904. One test case on this subject went to the circuit court of appeals, second circuit. The importers then prepared a new one, which they took to the Supreme Court and there lost it. This case has been ready for decision over a year.

CODEIN—OPIUM SALTS.

Suit 3968. Levi *v.* United States.
Decided by the board March 3, 1905. Record returned May 6, 1905, four years ago.

COLORS CONTAINING LEAD—GLASS ENAMEL.

Suits 4115 and 4116. J. Marsching & Co. *v.* United States (4115) and United States *v.* J. Marsching & Co. (4116).
Decided by the board August 30, 1905. Record returned to the circuit court November 17, 1905, almost four years ago.

SCALLOPED ARTICLES.

Suit 4148. Waentig *v.* United States.
Decided by the board November 9, 1905. Record returned to circuit court December 15, 1905. A cross appeal by the United States has been decided at circuit and is now pending in the circuit court of appeals, second circuit.

FERROS—METALS UNWROUGHT—FERROMANGANESE.

Suits 4158, 4179, and 4180. United States *v.* K. Sugawa & Co. (4158), United States *v.* O. G. Hempstead & Son (4179), and United States *v.* Dana & Co. (4180).
Suit 4158 was decided by the board December 9, 1905, and the record was returned to the circuit court January 24, 1906. The other cases were decided January 17, 1906, and the records returned February 20, 1906. Test cases have been decided in the circuit court of appeals for the second circuit, and by the same court for the third circuit; and other test appeals have just been taken to the last-named court.

BUFFALO HIDES.

Suits 4188–4193. United States *v.* Muller, Schall & Co. (4188), United States *v.* G. B. Ritchie & Co. (4189), United States *v.* American Hide and Leather Company (4190), United States *v.* Abe Stein Company (4191), United States *v.* J. H. Rossbach & Bros. (4192), and United States *v.* Joseph Hecht & Sons (4193).
Decided by the board January 30, 1906.
Suits 4204, 4205. United States *v.* Wertheim & Schmoll Company (4204) and United States *v.* Abe Stein Company (4205).
Decided by the board January 30, 1906.
Suit 4209. Joseph Hecht & Sons *v.* United States.
Decided by the board January 30, 1906.
Suits 5290, 5291. United States Leather Company *v.* United States (5290) and Fredk. Probst & Co. *v.* United States (5291).
Decided by the board May 18, 1908.
Suit 5300. J. H. Rossbach & Bros. *v.* United States.
Decided by the board May 12, 1908.
Suit 5309. F. B. Vandegrift & Co. *v.* United States.
Decided by the board May 18, 1908.
Suit 5325. Baeder, Adamson & Co. *v.* United States.
Decided by the board June 29, 1908.
The original case was decided by the board January 23, 1906; records returned to the circuit court February 20, 1906. This matter has twice been to the circuit court of appeals, second circuit, and in the second case the Supreme Court more than a year ago denied a writ of certiorari, thus practically settling the question against the importers.

SINGAPORE BUFFALO HIDES.

Suit 4202. United States *v.* Harburger & Stack.
Suits 5345–5353. United States *v.* W. L. Wadleigh (5345), United States *v.* Winter & Smillie (5346), United States *v.* Baeder, Adamson & Co. (5347), United States *v.* East Asian Mercantile Company (5348), United States *v.* Harburger & Stack (5349), United States *v.* Chas. Schieren & Co. (5350), United States *v.* Abe Stein Company (5351), United States *v.* C. V. Pustau & Co. (5352), and United States *v.* Alphonse Weil & Bros. (5353).
Decided by the board September 16, 1908.
The original case was decided by the board January 30, 1906; return made April 4, 1906. This issue was passed on by the circuit court of appeals, second circuit, several years ago. Another test case has just been decided against the United States, and an appeal to the circuit court of appeals, second circuit, will probably be taken.

GERMAN SUGAR BOUNTY.

Suit 4206. American Sugar Refining Company *v.* United States.
Decided by the board January 31, 1906; record returned June 2, 1906. A similar case has been pending two years in the circuit court for the eastern district of Pennsylvania.

BRAIDS.

Suit 4232. Dearbergh Brothers *v.* United States.
Decided by the board March 29, 1906; return made May 29, 1906, three years ago.

ARTIFICIAL HORSEHAIR.

Suits 4332–4334, 4336–4341. Berlin & Trosky *v.* United States (4232), Dieckerhoff, Raffloer & Co. *v.* United States (4333), R. F. Downing & Co. *v.* United States (4334), M. Goldberg *v.* United States (4336), G. Hirsch's Sons *v.* United States (4337), Moeller & Littauer *v.* United States (4338), G. Robison & Son *v.* United States (4339), Stern & Stern *v.* United States (4340), and F. A. Straus & Co. *v.* United States (4341).
Suit 4335 (106). Albert Eckstein *v.* United States.
Suits 4390, 4391. R. F. Downing & Co. *v.* United States (4390) and Albert Eckstein *v.* United States (4391).
Decided July 26, 1906.
The original cases were decided by the board June 22, 1906; record returned to circuit court September 25, 1906. A test appeal is now pending in the Supreme Court.

AMERICAN SHOOKS—FRUIT BOXES.

Suits 4374 and 4376. George J. Dunlop et al. *v.* United States (4374) and P. Saitta & Co. *v.* United States (4376).
Decided by the board June 6, 1906; records returned July 5, 1906.
Suit 5011. Dominici Brothers *v.* United States.
Decided by the board June 27, 1907.
Suits 5025–5028. Brucato Brothers *v.* United States (5025), B. Follina *v.* United States (5026), F. Minaldi & Co. *v.* United States (5027), and P. Sciortino *v.* United States (5028).
Decided by the board July 30 and 31, 1907.
Suit 5045. Hirzel, Feltmann & Co. *v.* United States.
Decided by the board August 12, 1907.
Suits 5053–5057 and 5061–5063. G. Calabrese *v.* United States (5053), A. Caramusa *v.* United States (5054), S. Dilliberto *v.* United States (5055), L. G. Marino & Co. *v.* United States (5056), G. R. Meeker & Co. *v.* United States (5057), L. Contencin & Son *v.* United States (5061), Villari, Mitchell & Co. *v.* United States (5062), and C. Wilkinson's Sons *v.* United States (5063).
Decided by the board August 22, 1907.
Suits 5088, 5089 and 5093–5102. O. F. Maniscalco *v.* United States (5088), Fratelli Sacca *v.* United States (5089), A. Carramusa *v.* United States (5093), G. D'Allesandra *v.* United States (5094), John Maniscalco v. United States (5095), P. Saitta & Co. *v.* United States (5096), W. H. Westervelt & Co. *v.* United States (5097), Courtin & Golden *v.* United States (5098), E. & A. Graziano *v.* United States (5099), A. Mannino *v.* United States (5100), F. Renda *v.* United States (5101), and F. B. Vandegrift & Co. *v.* United States (5102).
Decided by the board October 3, 9, and 15, 1907.
Suits 5106, 5107. G. Cutietta *v.* United States (5106) and R. A. Tucker *v.* United States (5107).
Decided by the board October 31, 1907.
Suits 5202–5204. Brucato Brothers *v.* United States (5202), P. Saitta & Co. *v.* United States (5203), and F. Zito *v.* United States (5204).
Decided by the board January 6, 1908.
Suits 5230–5234. Annello & Zito *v.* United States (5230), F. Gatto *v.* United States (5231), G. Gatto *v.* United States (5232), F. Zito Scalici *v.* United States (5233), and F. Zito *v.* United States (5234).
Decided by the board January 27, 1908.
Suits 5249–5259. Brucato Brothers *v.* United States (5249), G. Cappadonia *v.* United States (5250), A. Carramusa *v.* United States (5251), Courtin & Golden Company *v.* United States (5252), S. Dilliberto *v.* United States (5253), B. Follina *v.* United States (5254), Hirzel, Feltmann & Co. *v.* United States (5255), F. Minaldi & Co. *v.* United States (5256), P. Saitta & Co. *v.* United States (5257), P. Sciortino *v.* United States (5258), and F. Zito *v.* United States (5259).
Decided by the board February 28 and March 25, 1908.
Suits 5277, 5278. G. Lasagna *v.* United States (5277) and Dominici Brothers *v.* United States (5278).
Decided by the board March 25, 1908.
Suit 5281. P. Sciortino *v.* United States.
Decided by the board March 28, 1908.
Suits 5302–5308. Brucato Brothers *v.* United States (5302), Dominici Brothers *v.* United States (5303), B. Follina *v.* United States (5304), Hirzel, Feltmann & Co. *v.* United States (5305), G. Lasagna *v.* United States (5306), F. Minaldi & Co. *v.* United States (5307), and F. Zito *v.* United States (5308).
Decided by the board May 14, 1908.
Suit 5355. G. Lo Cicero *v.* United States.
Decided by the board September 12, 1908.
Suits 5363–3568. G. Cappadonia *v.* United States (5363), A. Carramusa *v.* United States (5364), Courtin & Golden Company *v.* United States (5365), Dominici Brothers *v.* United States (5366), P. Sciortino *v.* United States (5367), and Frank Zito *v.* United States (5368).
Decided by the board September 24, 1908.
Suits 5396–5400. Brucato Brothers *v.* United States (5396), Brucato Brothers Company *v.* United States (5397), Dominici Brothers *v.* United States (5398), C. E. Thurston & Co. *v.* United States (5399), and Frank Zito *v.* United States (5400).
Decided by the board November 25, 1908.

Suits 5403–5409. P. Tramontana & Co. *v.* United States (5403), G. Casesa & Co. *v.* United States (5404), G. Lo Cicero *v.* United States (5405), J. G. Cuccio & Co. *v.* United States (5406), A. Conigliaro *v.* United States (5407), A. Fazio *v.* United States (5408), and P. Giammanco *v.* United States (5409).
Decided by the board November 27 and December 16, 1908.
Suit 5427. C. I. & M. Dingfelder et al. *v.* United States.
Decided by the board December 29, 1908.

FEATHERSTITCH BRAIDS.

Suits 4420–4445. Bauman, Ludewig & Co. *v.* United States (4420), Berg Brothers *v.* United States (4421), Bloomingdale Brothers *v.* United States (4422), Boessneck, Broesel & Co. *v.* United States (4423), H. B. Claflin Company *v.* United States (4424), Drevert, Poirier & Poggenburg *v.* United States (4425), Guthman, Solomons & Co. *v.* United States (4426), A. J. Hague & Co. *v.* United States (4427), D. Hirschberg & Bro. *v.* United States (4428), Kennedy & Moon *v.* United States (4429), Knauth, Nachod & Kühne *v.* United States (4430), Mills & Gibb *v.* United States (4431), Neuberger, Heine & Co. *v.* United States (4432), Pratt & Farmer *v.* United States (4433), Pratt & Farmer Company *v.* United States (4434), C. B. Rouss *v.* United States (4435), Estate of C. B. Rouss *v.* United States (4436), Samstag & Hilder Brothers *v.* United States (4437), A. Steinhardt & Bro. *v.* United States (4438), Strauss Brothers & Co. *v.* United States (4439), Strauss, Sachs & Co. *v.* United States (4440), Syndicate Trading Company *v.* United States (4441), William J. Urchs *v.* United States (4442), C. M. Vom Baur *v.* United States (4443), Weiller & Sons *v.* United States (4444), and H. Wolf & Co. *v.* United States (4445).
Decided by the board July 25, 1906.
Suits 4449–4456. Calhoun, Robbins & Co. *v.* United States (4449), G. Reis & Bro. *v.* United States (4450), Dieckerhoff, Raffloer & Co. *v.* United States (4451), George Borgfeldt & Co. *v.* United States (4452), B. Ulmann & Co. *v.* United States (4453), Neuburger & Co. *v.* United States (4454), Edwin Horrax *v.* United States (4455), and Neuburger, Heine & Co. *v.* United States (4456).
Decided by the board July 26, 1906.
Suit 4605. George Borgfeldt & Co. *v.* United States.
Decided by the board October 1, 1906.
Suit 4620. A. Steinhardt & Bro. *v.* United States.
Decided by the board October 8, 1906.
Suits 4653–4658 and 4675–4677. Leopold Baruch *v.* United States (4653), Berg Brothers et al. *v.* United States (4654), Samstag & Hilder Brothers *v.* United States (4655), A. Steinhardt & Bro. *v.* United States (4656), Strauss Brothers & Co. *v.* United States (4657), Wieller & Sons *v.* United States (4658), Dieckerhoff, Raffloer & Co. *v.* United States (4675), Calhoun, Robbins & Co. *v.* United States (4676), and Neuburger & Co. *v.* United States (4677).
Decided by the board October 29, 1906.
Suits 4715, 4716. A. J. Hague & Co. *v.* United States (4715) and Bauman, Ludewig & Co. *v.* United States (4716).
Decided by the board December 4 and 7, 1906.
Suits 4719–4729 and 4735. Leopold Baruch *v.* United States (4719), H. B. Claflin Company *v.* United States (4720), Guthman, Solomons & Co. *v.* United States (4721), Mills & Gibb *v.* United States (4722), Pratt & Farmer Company *v.* United States (4723), C. B. Rouss *v.* United States (4724), Samstag & Hilder Brothers *v.* United States (4725), A. Steinhardt & Bro. *v.* United States (4726), Strauss Brothers & Co. *v.* United States (4727), William J. Urchs *v.* United States (4728), Weiller & Sons *v.* United States (4729), and Dieckerhoff, Raffloer & Co. *v.* United States (4735).
Decided by the board December 7, 1906.
Suits 4759–4762. Berg Brothers *v.* United States (4759), Mills & Gibb *v.* United States (4760), Samstag & Hilder Brothers *v.* United States (4761), and C. M. Vom Baur *v.* United States (4762).
Decided by the board December 17, 1906.
Suit 4816. Dieckerhoff, Raffloer & Co. *v.* United States.
Decided by the board January 17, 1907.
Suit 4834. Leopold Baruch *v.* United States.
Decided by the board January 25, 1907.
Suit 4854. George Borfgeldt & Co. *v.* United States.
Decided by the board January 31, 1907.
Suits 4877 and 4879–4885. Dieckerhoff, Raffloer & Co. *v.* United States (4877), Leopold Baruch *v.* United States (4879), A. J. Hague & Co. *v.* United States (4880), Pratt & Farmer *v.* United States (4881), Samstag & Hilder Brothers & Co. *v.* United States (4882), A. Steinhardt & Bro. *v.* United States (4883), Strauss Brothers & Co. *v.* United States (4884), and Weiller & Sons *v.* United States (4885).
Decided February 9 and 11, 1907.
Suit 4913. Dieckerhoff, Raffloer & Co. *v.* United States.
Decided by the board March 26, 1907.
Suits 4923–4932. L. Baruch *v.* United States (4923), H. B. Claflin Company *v.* United States (4924), Guthman, Solomons & Co. *v.* United States (4925), Pratt & Farmer Company *v.* United States (4926), Samstag & Hilder Brothers *v.* United States (4927), A. Steinhardt & Bro. *v.* United States (4928), Strauss Brothers & Co. *v.* United States (4929), Syndicate Trading Company *v.* United States (4930), William J. Urchs *v.* United States (4931), and Weiller & Sons *v.* United States (4932).
Decided by the board April 1, 1907.
Suit 4965. George Borgfeldt & Co. *v.* United States.
Decided by the board June 5, 1907.
Suits 4969–4971. A. Steinhardt & Bro. *v.* United States (4969), Strauss Brothers & Co. *v.* United States (4970), and Weiller & Sons *v.* United States (4971).
Decided by the board June 5, 1907.
Suit 4977. Dieckerhoff, Raffloer & Co. *v.* United States.
Decided by the board June 13, 1907.
Suits 5109–5114. Leopold Baruch *v.* United States (5109), Samstag & Hilder Brothers *v.* United States (5110), A. Steinhardt & Bro. *v.* United States (5111), Strauss Brothers & Co. *v.* United States (5112), W. J. Urchs *v.* United States (5113), and Weiller & Sons *v.* United States (5114).
Decided by the board October 29, 1907.
Suits 5118–5120. Calhoun, Robbins & Co. *v.* United States (5118), Neuburger & Co. *v.* United States (5119), and Dieckerhoff, Raffloer & Co. *v.* United States (5120).
Decided by the board November 7, 1907.
Suits 5183–5187. A. Strauss & Co. et al. *v.* United States (5183), Leopold Baruch *v.* United States (5184), Samstag & Hilder Brothers *v.* United States (5185), A. Steinhardt & Bro. *v.* United States (5186), and Strauss Brothers & Co. *v.* United States (5187).
Decided by the board December 20, 1907.
Suit 5236. Dieckerhoff, Raffloer & Co. *v.* United States.
Decided by the board February 6, 1908.

Suits 5284–5286. Samstag & Hilder Brothers *v.* United States (5284), A. Steinhardt & Bro. *v.* United States (5285), and Strauss Brothers *v.* United States (5286).
Decided by the board April 14, 1908.
Suit 5332. Dieckerhoff, Raffloer & Co. *v.* United States.
Decided by the board July 14, 1908.
Suits 5337–5340. L. Baruch *v.* United States (5337), Samstag & Hilder Brothers *v.* United States (5338), A. Steinhardt & Bro. *v.* United States (5339), and Strauss Brothers & Co. *v.* United States (5340).
Decided by the board July 21, 1908.
Suit 5385. Dieckerhoff, Raffloer & Co. *v.* United States.
Decided by the board October 27, 1908.
Suits 5411–5414. L. Baruch *v.* United States (5411), Samstag & Hilder Brothers *v.* United States (5412), A. Steinhardt & Bro. *v.* United States (5413), and Strauss Brothers & Co. *v.* United States (5414).
Decided by the board November 30, 1908.
Suits 5448, 5449. Neuburger & Co. *v.* United States (5448), and Dieckerhoff, Raffloer & Co. *v.* United States (5449).
Decided by the board January 19, 1909.
Suits 5455–5458. L. Baruch *v.* United States (5455), Samstag & Hilder Brothers *v.* United States (5456), A Steinhardt & Bro. *v.* United States (5457), and Strauss Brothers & Co. *v.* United States (5458).
Decided by the board January 29, 1909.
The original cases were decided by the board July 25, 1906. A test case has just been won by the importers in the circuit court of appeals for the second circuit, and the matter is awaiting the action of the Department of Justice.

STEEL HORSESHOE CALKS.

Suit 4448. Maldonado & Co. *v.* United States.
Decided by the board July 27, 1906.

AMERICAN GOODS LABELED ABROAD.

Suit 4494. Lunham & Moore *v.* United States.
Decided by the board August 23, 1906. This case has been continued many times to permit further testimony to be taken at New Orleans.

ENAMEL WHITE—PAINT.

Suits 4592 and 4594, 4595. Pomeroy & Fischer *v.* United States (4592), Maltus & Ware *v.* United Statts (4594), and Hensel, Bruckmann & Lorbacher *v.* United States (4595).
Suit 4619. Kempshall Manufacturing Company *v.* United States.

EMBROIDERED PARASOLS.

Suit 4604. Stern Brothers *v.* United States.
Decided by the board October 1, 1906. This case was ready for argument two years ago.

DRAWNWORK—LACE.

Suit 4616. Bernhard Ulmann & Co. *v.* United States.
Decided by the board October 3, 1906.

SHORTAGE OF SPIRITS.

Suits 3884, 3939, and 3950. Natale Licata *v.* United States (3884), E. LaMontagne & Sons *v.* United States (3939), and Julius Wile, Sons & Co. *v.* United States (3950).
Suit 4275. Julius Wile, Sons & Co. *v.* United States.
Suit 4296. Hartman, Goldsmith & Co. *v.* United States.
Suit 4301. Weideman Company *v.* United States.
Suit 4303. Batjer & Co. *v.* United States.
Suit 4635. Batjer & Co. *v.* United States.
Suit 4638. Hartman, Goldsmith & Co. *v.* United States.

BALL BEARINGS.

Suit 4679. Hensel, Bruckmann & Lorbacher *v.* United States.
Decided by the board November 23, 1906; record returned February 7, 1907.

SPANGLES.

Suit 4680. Morris Goldberg *v.* United States.
Decided by the board November 15, 1906.

STRAW PLATEAUX.

Suit 4682. Samuel Schiff & Co. *v.* United States.
Decided by the board November 19, 1906.

DISCOUNT.

Suit 4697. L. Straus & Sons *v.* United States.
Decided by the board November 22 and 23, 1906.
Suit 4808. L. Straus & Sons *v.* United States.
Decided by the board December 27, 1906.

IMITATION HORSEHAIR HATS.

Suits 4717, 4718. R. L. Cochran & Co. *v.* United States (4717) and Rosenblum & Sentner *v.* United States (4718).
Decided by the board December 7, 1906.

IMITATION HORSEHAIR BRAIDS.

Suit 4739. J. S. Plummer & Co. *v.* United States.
Decided by the board December 14, 1906.

FRUIT PRESERVED IN ALCOHOL.

Suit 4756. R. F. Downing & Co. *v.* United States.

BLEACHED COTTONS.

Suit 4757. United States *v.* McGibbon & Co.
Decided by the board December 28, 1906.

OLIVES, RIPE OR BLACK.

Suit 4758. Strohmeyer & Arpe Company *v.* United States.
Decided by the board December 17 and 28, 1906.
Suits 4806, 4807. United States *v.* Zucca & Co. (4806) and United States *v.* S. D. Stamatopoulos (4807).
Decided by the board December 27, 1906.
Suits 4817, 4826. United States *v.* E. D. Papavasilopulo (4817), United States *v.* S. Moscahlaides (4818), United States *v.* G. P. Calogera (4819), United States *v.* C. S. Galanopulo (4820), United States *v.* Theo. Economo & Bro. (4821), United States *v.* R. F. Downing & Co. (4822), United States *v.* Therry Brothers (4823), United States *v.* William A. Brown & Co. (4824), United States *v.* Zucca & Co. (4825), and United States *v.* S. D. Stamatopoulos (4826).
Decided by the board January 22, 1907. Orders for further testimony are still open in these cases.

CUBAN TREATY—PREFERENTIAL DUTY.

Suits 4830, 4831. Havana Tobacco Company *v.* United States (4830) and American Cigar Company *v.* United States (4831).
Decided by the board January 22 and 30, 1907.
Suit 4833. G. Falk & Bro. et al. *v.* United States.
Decided by the board January 22 and 30, 1907.

SUGAR BOUNTY—DUTIABLE WEIGHT.

Suits 4828 and 4893. United States *v.* American Sugar Refining Company.
Decided by the board January 25 and March 5, 1907. A like case was decided by the circuit court of appeals, third circuit, April, 1905, on appeal from a decision of the board in January, 1902. An order for further testimony is still open; outstanding over four years.

ONIONSKIN PAPER.

Suit 4832. Hensel, Bruckmann & Lorbacher *v.* United States.
Decided by the board January 22, 1907.

GRANITE MONUMENTS.

Suit 4848. F. B. Vandegrift & Co. *v.* United States.
Decided by the board January 28, 1907.
Suits 4902, 4903. New York Granite Company *v.* United States (4902) and Austin Baldwin & Co. v. United States (4903).
Decided by the board March 7 and 25, 1907.
Suit 4914. F. B. Vandegrift & Co. *v.* United States.
Decided by the board March 25, 1907.
Suits 5198–5200. F. B. Vandegrift & Co. *v.* United States (5198), Austin Baldwin & Co. *v.* United States (5199), and New York Granite Company *v.* United States (5200).
Decided by the board January 2, 1908.
Suit 5322. F. B. Vandegrift & Co. *v.* United States.
Decided by the board June 26, 1908.
Suit 5380. New York Granite Company *v.* United States.
Decided by the board October 16, 1908.
Suit 5439. New York Granite Company *v.* United States.
Decided by the board December 31, 1908.
Test cases have been decided by the circuit court of appeals, second circuit, and the same court for the third circuit, and a writ of certiorari has been denied by the Supreme Court. The importers are now preparing a third test case to be tried in the circuit court of appeals, second circuit.

FEATHER ARTICLES.

Suits 4856–4875. United States *v.* R. L. Cochran Company (4856), United States *v.* Max Herman & Co. (4858), United States *v.* Kimmerle & Dawes (4858), United States *v.* M. Katz (4859), United States *v.* David Spero Company (4860), United States *v.* Sommerich, Kalischer & Loewith (4861), United States *v.* Knauth, Nachod & Kühne (4862), United States *v.* Alfred L. Simon & Co. (4863), United States *v.* Wurzburger & Hecht (4864), United States *v.* Zucker & Josephy (4865), United States *v.* Warshauer & Rosemond (4866), United States *v.* Edward B. Goodman & Co. (4867), United States *v.* I. Lindheim, executor (4868), United States *v.* A. Hochheimer (4869), United States *v.* Rosenblum & Sentner (4870), United States *v.* Scheuer Brothers (4871), United States *v.* Benjamin Stearns & Co. (4872), United States *v.* A. A. Zeiner (4873), United States *v.* Hunken, Neale & Forbs (4874), and United States *v.* Appel & Kleinman (4875).
Decided by the board February 4, 1907.

ARTIFICIAL HORSEHAIR—BLANKET PROTESTS.

Suits 4852–4853. J. H. Lichtenstein & Co. *v.* United States (4852) and John Zimmerman Company *v.* United States (4853).
Decided by the board February 1, 1907.

MAGNESIA ARTICLES.

Suit 4894. D. S. Hesse & Bro. *v.* United States.
Decided February 26, 1907. This appeal is continued pending the preparation of a new case before the board.

ORNAMENTAL LEAVES.

Suits 4897–4901. D. Buhrig *v.* United States (4897), A. Herrmann *v.* United States (4898), L. J. Kreshower *v.* United States (4899), D. Spero Company *v.* United States (4900), and Max Herman *v.* United States (4901).
Decided by the board March 5, 1907. These are continued pending the settlement of a case in the circuit court of appeals, third circuit.

WASTE BAGGING—RAGS.

Suits 4910–4912. Castle, Gottheil & Overton *v.* United States (4910), Felix Salomon & Co. *v.* United States (4911), and A. Katzenstein *v.* United States (4912).
Decided by the board March 22 and 25, 1907.
Suits 5039–5042. Castle, Gottheil & Overton *v.* United States (5039), Felix Salomon & Co. *v.* United States (5040), A. Katzenstein *v.* United States (5041), and Salomon Brothers & Co. *v.* United States (5042).
Decided by the board July 31, 1907.
Suit 5237. A. Katzenstein *v.* United States.
Decided by the board February 10, 1908.
Suits 5266–5267. W. Wolf & Sons *v.* United States (5266) and F. B. Vandegrift & Co. *v.* United States (5267).
Decided by the board March 9 and 27, 1908.

WOOL GREASE—LANOLIN.

Suits 4934–4936. Evans & Son (Limited) *v.* United States (4934), Merck & Co. *v.* United States (4935), and Victor Koechl & Co. *v.* United States (4936).
Decided by the board April 5, 1907. The importers lately lost a like case in the circuit court of appeals, second circuit, but are preparing a new case before the board.

GELATIN PRINTS—LICHTDRUCK PROCESS—SUFFICIENCY OF PROTESTS.

Suits 4951–4953. The Rotograph Company *v.* United States (4951), Hensel, Bruckmann & Lorbacher *v.* United States (4952), and American News Company *v.* United States (4953).
Decided by the board May 14, 1907.

SUGAR BOUNTY.

Suit 4959. American Sugar Refining Company *v.* United States.
Decided by the board May 31, 1907.

EMBROIDERED SCREENS.

Suit 4960. Morimura Brothers *v.* United States.
Decided by the board May 27, 1907. This is a new case on an issue decided against the importers two years ago in Lichtenstein *v.* United States (— Fed. Rep., —).

SUGAR BOUNTY.

Suit 4966. United States *v.* American Sugar Refining Company.
Decided by the board June 10, 1907.

GRINDING DISKS.

Suit 4967. Prosser & Son *v.* United States.
Decided by the board June 21, 1907.

GUTTA-PERCHA WASTE.

Suit 4968. A. H. Ringk & Co. *v.* United States.
Decided by the board June 5, 1907.

NICKLED IRON SHEETS.

Suit 4976. Hermann Boker & Co. *v.* United States.
Decided by the board June 10, 1907.

BLEACHERS' BLUE.

Suit 4978. A. De Ronde & Co. *v.* United States.
Decided by the board June 14, 1907. This is the second time this question has arisen in this court.

CARNAUBIN WAX.

Suit 4995. United States *v.* C. B. Richard & Co.
This case has been continued in this court pending action on a test case in the circuit court of appeals, second circuit.

OLIVE OIL IN 1-GALLON TINS.

Suit 5012. Euler & Robeson *v.* United States.
One phase of this question was decided in the circuit court of appeals, second circuit, more than a year ago.

TOY FLAGS.

Suit 5030. Morimura Brothers *v.* United States.
Decided by the board July, 1907.

ROTTEN FRUIT.

Suits 5036–7. United States *v.* J. M. Ceballos & Co. (5036) and United States *v.* Courtin & Golden Company (5037).
Decided by the board August 10, 1907.
Suit 5371. J. G. Cuccio & Co. *v.* United States.
Decided by the board September 29, 1908.
Suit 5391. C. E. Thurston & Co. *v.* United States.
Decided by the board November 6, 1908.
Suit 5395. W. M. French *v.* United States.
Decided by the board November 20, 1908.
Suits 5401–2. Frank D'Anci *v.* United States (5401) and G. Cuccio di G. & Co. *v.* United States (5402).
Decided by the board November 27, 1908.
Suit 5410. F. Zito *v.* United States.
Decided by the board November 30, 1908.

BEADED ARTICLES—LAMP FRINGES.

Suits 5046–52. Holcomb & Co. *v.* United States (5046), C. M. Horch *v.* United States (5047), Horstmann Von Hein & Co. *v.* United States (5048), The Ideal Gas and Electric Company *v.* United States (5049), The Will & Baumer Company *v.* United States (5050), H. Hohenstein Company *v.* United States (5051), and G. Hirsch's Sons *v.* United States (5052).
Decided by the board August 13, 1907.

CADMIUM SULPHIDE.

Suit 5064. B. F. Drakenfeld & Co. *v.* United States.
Decided by the board August 28, 1907.

PAINTED LITHOGRAPHS.

Suit 5065. A. Steinhardt & Bro. *v.* United States.

FUR WASTE.

Suit 5069. Hatters' Fur Exchange *v.* United States.
Decided by the board September 20, 1907. This class of merchandise has previously been passed upon by this court.

JAM—MARMALADE.

Suit 5070. Bogle & Scott et al. *v.* United States.
Suits 5075–6. Dunlop & Ward *v.* United States.
Decided by the board September 23, 1907.

ENFLEURAGE GREASE.

Suit 5074. E. H. Burr *v.* United States.
Decided by the board September 24, 1907.

BONE SCREENS.

Suits 5085, 5086. Mogi, Monomoi & Co. *v.* United States (5085) and Morimura Brothers *v.* United States (5086).
Decided by the board September 30, 1907.

BINDINGS—EDGINGS.

Suits 5103, 5104. L. A. Consmiller *v.* United States (5103) and Massce & Whitney *v.* United States (5104).
Decided by the board October 17, 1907.

RHODIUM.

Suit 5105. United States *v.* Wells, Fargo & Co.
Decided by the board October 30, 1907.

SILK ELASTIC BELTS.

Suit 5115. Simpson-Crawford Co. *v.* United States.
Decided by the board November 1, 1907.

SILK ORGANZINE.

Suit 5117. Rudolph Cohen *v.* United States.
Decided by the board November 7, 1907.

HINOKI BASKETS.

Suit 5126. Morimura Brothers *v.* United States.

PENHOLDERS—PARTS OF FOUNTAIN PENS.

Suit 5178. Schrader & Ehlers *v.* United States.
Decided by the board December 14, 1907.

CHOCOLATE CONFECTIONERY.

Suit 5179. Horace L. Day Company *v.* United States.
Decided by the board January 2, 1908. This is a recrudescence of a question that has arisen under former acts, and has been passed on by the Supreme Court and the circuit court of appeals, second circuit.

ABANDONMENT.

Suit 5190. Habicht, Braun & Co. *v.* United States.

DECORATED CALENDARS—PAINTINGS.

Suit 5192. A. A. Vantine & Co. *v.* United States.

CONFECTIONERY—IMITATION FRUIT.

Suit 5201. A. A. Vantine & Co. *v.* United States.
Decided by the board January 16, 1908.

FIGURED COTTON CLOTH.

Suit 5223. Thomas Young *v.* United States.
Decided by the board January 18, 1908.

ARTIFICIAL SILK GLOVES.

Suit 5235. Edward Thomass & Co. *v.* United States.
Decided by the board February 6, 1908.

CONCENTRATED FRUIT JUICE.

Suit 5243. E. C. Rich *v.* United States.
Decided by the board February 17, 1908.

FRUIT PULP.

Suits 5244–6. A. L. Causse *v.* United States (5244) and Habicht, Braun & Co. *v.* United States (2 cases, 5245–6).
Decided by the board February 18, 1908.

FASHION-PLATE DRAWINGS—WORKS OF ART.

Suit 5247. Harper & Bro. *v.* United States.
Decided February 24, 1908.

CLEAR ALMONDS.

Suit 5248. Henry Heide *v.* United States.
Decided by the board February 29, 1908.

PHOTOGRAPH COVERS—ENVELOPES.

Suit 5262. Hensel, Bruckmann & Lorbacher *v.* United States.
Decided by the board February 29, 1908.
Suit 5280. Hensel, Bruckmann & Lorbacher *v.* United States.
Decided by the board March 28, 1908.

WASTE TOBACCO.

Suit 5264. Mendelsohn, Bornemann & Co. *v.* United States.
Decided by the board March 19, 1908.

ENGRAVED STEEL PLATE.

Suit 5265. Theodore W. Morris & Co. *v.* United States.

REAPPRAISEMENT—EXAMINATION OF MERCHANDISE.

Suit 6259. Loeb & Schoenfeld *v.* United States.
Decided March 14, 1908.

ROSARIES.

Suit 5272. Benziger Bros. *v.* United States.
Decided by the board March 17, 1908.

COMMISSIONS.

Suit 5273. S. Stein & Co. *v.* United States.
Decided by the board March 19, 1908.

STEEL SHAPES.

Suits 5274 and 5470. Central Stamping Co. *v.* United States.
Decided by the board March 31, 1908, and March 27, 1909.

CARBONATE OF BARYTA.

Suit 5275. United States *v.* Gabriel & Schall.
Decided by the board March 31, 1908.

FURNITURE.

Suit 5276. A. J. Woodruff & Co. *v.* United States.
Decided by the board March, 1908.

REAPPRAISEMENT OF OLIVE OIL.

Suit 5279. S. D. Stamatopoulos *v.* United States.
Decided by the board March 28, 1908.

COPPER PLATES.

Suit 5282. B. F. Drakenfeld & Co. *v.* United States.
Decided by the board April 3, 1908.

EMBROIDERED GLOVES.

Suits 5287–5289. United States *v.* T. H. La Fetra (5287), United States *v.* Pasavant & Co. (5288), and United States *v.* Trefousse, Goguenheim & Co. (5289).
Decided by the board April 23, 1908.
Suit 5295. United States *v.* T. H. La Fetra.
Decided by the board May 18, 1908.

SILK-WOOL DRESS GOODS.

Suit 5292. L. Ballot *v.* United States.
Decided by the board May 19, 1908.
Suits 5314–5317. Passavant & Co. *v.* United States (5314), C. Bahnsen & Co. *v.* United States (5315), Remy, Schmidt & Pleissner *v.* United States (5316), and Fleitmann & Co. *v.* United States (5317).
Decided by the board June 18, 1908.
Suit 5331. L. Ballot *v.* United States.
Decided by the board July, 1908.
Suit 5343. C. A. Auffmordt & Co. *v.* United States.
Suit 5357. Fleitmann & Co. *v.* United States.
Suit 5373. Levison Brothers & Co. *v.* United States.
Suits 5386–5388. L. Ballot *v.* United States (5386), C. A. Auffmordt & Co. *v.* United States (5387), and Levison Brothers & Co. *v.* United States (5388).
Decided by the board October, 1908.
Suit 5440. Knauth, Nachod & Kuhne *v.* United States.
Decided by the board December 31, 1908.
These cases have been continued pending the result of a test case in the circuit court of appeals, first circuit. A previous case has been passed on by the circuit court of appeals, eighth circuit, and a writ was denied by the Supreme Court.

BOTTICINI STONE—MARBLE.

Suit 5296. Pisani Brothers *v.* United States.
Decided by the board April 29, 1908.

COLORED COPYING PAPER.

Suit 5297. H. C. Davison & Co. *v.* United States.
Decided by the board April 29, 1908.

OLIVE OIL.

Suit 5298. R. U. Delapenha & Co. *v.* United States.
Decided by the board April 29, 1908.

TOY PINS.

Suit 5301. Hamburger & Co. *v.* United States.
Decided by the board May 12, 1908.

LAKES.

Suit 5310. United States *v.* G. Siegle.
Decided by the board May 20, 1908.

REAPPRAISEMENT OF MATTING.

Suit 5311.
Decided by the board May 28, 1908.

MINERS' DIAMONDS.

Suit 5312. Sullivan Machinery Company *v.* United States.

LOTUS NUTS.

Suit 5313. Kwong Yuen Shing *v.* United States.
Decided by the board June 6, 1908.

BOILED-OFF SILKS.

Suit 5318. Schefer, Schramm & Vogel *v.* United States.
Decided by the board June 18, 1908.
Suits 5334–5336. G. Salto *v.* United States (5334), Max M. Schwarcz & Co. *v.* United States (5335), and Yokohama Importing Company *v.* United States (5336).
Decided by the board July 14, 1908.

REAPPRAISEMENT OF EMBROIDERIES.

Suit 5320. H. S. Beer *v.* United States.
Decided by the board July 6, 1908.

FUR—WOOL ON SKIN.

Suit 5326. International Hide and Skin Co. *v.* United States.
Decided by the board June 29, 1908.

PRINTED PULP MATS.

Suit 5327. Frederick Hollender & Co. *v.* United States.
Decided by the board July 6, 1908.

PRECIPITATED CHALK.

Suit 5328. United States *v.* P. E. Anderson & Co.

JOSS STICKS—INCENSE.

Suits 5329, 5330. Yamanaka & Co. *v.* United States (5329) and Morimura Brothers *v.* United States (5330).
Decided by the board July 11, 1908.

BIRCH BARK.

Suit 5333. Reed & Keller *v.* United States.
Decided by the board July 14, 1908.

BOTTLES WITH CUT-GLASS STOPPERS.

Suit 5341. Park & Tilford *v.* United States.
Decided by the board July 29, 1908.

POWDERED OPIUM.

Suit 5342. United States *v.* McKesson & Robbins.
Decided by the board July 31, 1908.
Suit 5370. United States *v.* Merck & Co.
Decided by the board September 30, 1908.
This is a relitigation of the matter already passed on by the circuit court of appeals, second circuit.

ENFLEURAGE GREASE.

Suit 5344. Euler & Robeson *v.* United States.
Decided by the board August 26, 1908.

PRO FORMA INVOICE.

Suit 5356. United States *v.* Bennett & Loewenthal.
Decided by the board September 15, 1908.

STRUCTURAL STEEL.

Suit 5362. Edward M. Ackerson *v.* United States.
Decided by the board September 23, 1908.

PRESERVED GINGER.

Suit 5369. R. U. Delapenha & Co. *v.* United States.
Decided by the board September 24, 1908.

BRONZE STATUARY—RECIPROCITY.

Suit 5372. B. Altman & Co. *v.* United States.
Decided by the board September 29, 1908. This is a question already passed on by the circuit court of appeals, second circuit.

OLIVE OIL.

Suit 5374. United States *v.* Kraemer & Foster.
Decided by the board October 16, 1908.

EMBROIDERED FURS.

Suit 5377. Hugo Jaeckel & Sons *v.* United States.
Decided by the board October 13, 1908.

REAPPRAISEMENT OF WOOL.

Suit 5378. Oelrichs & Co. *v.* United States.
Decided by the board October 13, 1908.

REAPPRAISEMENT.

Suit 5379. T. J. Keveney & Co. *v.* United States.
Decided by the board October 15 and 22, 1908.

POST-CARD BOOKLETS.

Suit 5382. R. F. Downing & Co. *v.* United States.
Decided by the board October 20, 1908.

FORGINGS.

Suit 5383. United States *v.* Thomas Prosser & Son.
Decided by the board October 30, 1908.

COIN SWORDS.

Suit 5384. Soy Kee & Co. *v.* United States.
Decided by the board October 27, 1908.

FORGINGS.

Suit 5389. Thomas Prosser & Co. *v.* United States.
Decided by the board October 30, 1908.

CUT AGATE, ETC.—PRECIOUS STONES.

Suit 5392. United States *v.* Albert Lorsch & Co.
Decided by the board November 6, 1908.

FISH IN LARGE TINS.

Suit 5393. Strohmeyer & Arpe Company *v.* United States.
Decided by the board November 13, 1908.

MANICURE STICKS.

Suit 5394. E. B. Estes & Sons *v.* United States.
Decided by the board November 20, 1908.

SUFFICIENCY OF PROTEST.

Suit 5416. E. C. Carter *v.* United States.
Decided by the board December 7, 1908.

OLIVE OIL.

Suits 5417–5422. Holbrook Manufacturing Company *v.* United States (5417), Swan & Finch Company *v.* United States (5418), Oil Seeds Company *v.* United States (5419), A. Klipstein & Co. *v.* United States

(5420), Welch, Holme & Clark Company *v.* United States (5421), and Arnold, Hoffman & Co. *v.* United States (5422).
Decided by the board December 8, 1908.
Suit 5424. Th. Balaban *v.* United States.
Decided by the board December 12, 1908.

MEASUREMENT OF GLOVES.

Suit 5423. United States *v.* F. Schmidt.
Decided by the board December 24, 1908.
This is an issue pending in the circuit court of appeals, second circuit.

BINOXIDE OF BARIUM.

Suit 5425. Charles E. Sholes Company *v.* United States.
Decided December 10, 1908.
Suit 5437. McKesson & Robbins *v.* United States.
Decided by the board December 22, 1908.

OLEIN—WOOL GREASE.

Suit 5426. Swan & Finch Company *v.* United States.
Decided by the board December 21, 1908.

AUTOMOBILE—HOUSEHOLD EFFECTS.

Suit 5428. Paul A. Isler *v.* United States.
Decided by the board December 18, 1908.
Suit 5464. Louis Sherry *v.* United States.
Decided by the board February 26, 1909.
This issue has already been passed upon by the circuit court of appeals, second circuit.

BALSAM IN CAPSULES.

Suits 5420, 5430. United States *v.* Lehn & Fink (5429) and Lehn & Fink *v.* United States (5430).
Decided by the board December 15, 1908.

HANDMADE PRINTING PAPER.

Suit 5431. American Trading Company *v.* United States.
Decided by the board December 16, 1908.
This issue has already been passed on by the circuit court of appeals, second circuit.

POST CARDS OF PAPER AND OTHER MATERIALS.

Suits 5432–5436. Jacob Deutsch *v.* United States (5432), Hensel, Bruckmann & Lorbacher *v.* United States (three cases, 5433–5435), and A. H. Ringk *v.* United States (5436).
Decided by the board December 18, 1908.

REAPPRAISEMENT.

Suit 5438. T. J. Keveney & Co. *v.* United States.
Decided by the board December 28, 1908.

APPLIQUÉED COLLARETTES.

Suit 5442. J. Krusi *v.* United States.
Decided by the board January 12, 1909.

HAUTEVILLE STONE, ETC.—MARBLE.

Suits 5443–5447. United States *v.* C. D. Jackson & Co. (5443), United States *v.* Pisani Brothers (5444), United States *v.* Traitell Marble Company (5445), United States *v.* A. E. Bockmann (5446), and United States *v.* Robert Rossman (5447).
Decided by the board January 25, 1909.
This issue has already been passed upon by the circuit court of appeals, second circuit.

DRILLED PEARLS.

Suit 5454. United States *v.* Tiffany & Co.
Decided by the board February 6, 1909.
Suit 5460. W. G. Hockridge & Co. *v.* United States.
Decided by the board February 11, 1909.

GLOVES.

Suit 5461. United States *v.* Spielmann & Co.
Decided by the board February 15, 1909.

ICHTHYOL.

Suit 5462. Merck & Co. *v.* United States.
Decided by the board February 25, 1909.

RECIPROCITY—COUNTRY OF ORIGIN.

Suit 5463. Acker, Merrall & Condit Company *v.* United States.
Decided by the board February 26, 1909.

GLOVES.

Suit 5465. Goldschmidt Brothers Company *v.* United States.
Decided by the board February 26, 1909.

COTTON CLOTH IN PART OF JUTE.

Suit 5466. Lord & Taylor *v.* United States.
Decided by the board February 27, 1909. This reopens a question decided against the importers twenty-five or thirty years ago.

CHINESE SHOES EMBROIDERED.

Suit 5467.
Decided by the board February 27, 1909.

LITHOGRAPHIC CALENDARS.

Suit 5468.
Decided by the board March 4, 1909.

YAMS—PUERARIA ROOTS.

Suit 5471.
Decided by the board March 27, 1909.

GRANITO.

Suit 5472.
Decided by the board March 9 and 31, 1909. Relitigation of issue passed on by the circuit court for the southern district of Ohio.

STEEL STAMPINGS.

Suit 4213. United States *v.* A. & H. Veith.

CABRETTA SKINS.

Suit 4258. Booth & Co. *v.* United States.

STEEL GRINDING PLATES.

Suit 4378. United States *v.* Thomas Prosser & Son.
Decided July 12, 1906.

BRAIDS.

Suit 4397. J. Zimmerman's Sons *v.* United States.
Decided July 26, 1906.

The VICE-PRESIDENT. Is there a second to the demand for the yeas and nays?

The yeas and nays were ordered.

Mr. ALDRICH. The question is on concurring in the amendment made as in Committee of the Whole.

The VICE-PRESIDENT. The question is on concurring in section 29, on page 362.

Mr. KEAN. And section 30 also.

Mr. ALDRICH. Sections 29 and 30.

The VICE-PRESIDENT. The Chair understands that they are to be voted on by a yea-and-nay vote.

Mr. CUMMINS. Yes.

The VICE-PRESIDENT. The demand is for a yea-and-nay vote on sections 29 and 30, and the Secretary will call the roll.

The Secretary proceeded to call the roll.

Mr. BOURNE (when his name was called). I have a general pair with the senior Senator from Oklahoma [Mr. OWEN]. If he were present and voting, I should vote "yea."

Mr. DILLINGHAM (when his name was called). I withhold my vote because of the general pair I have with the senior Senator from South Carolina [Mr. TILLMAN], who is absent.

Mr. GUGGENHEIM (when his name was called). I make the same announcement I did on the previous vote.

Mr. LODGE (when his name was called). I am paired with the Senator from Georgia [Mr. CLAY]. Therefore I withhold my vote. If he were present, I should vote "yea."

The roll call was concluded.

Mr. DEPEW. My colleague [Mr. ROOT] is absent, delivering the address at the tercentennial celebration of the discovery of Lake Champlain. He is paired with the Senator from Maryland [Mr. RAYNER], and if he were present and not paired, he would vote "yea."

Mr. OVERMAN. The junior Senator from Maryland [Mr. RAYNER] is paired with the junior Senator from New York [Mr. ROOT]. Also, the junior Senator from Arkansas [Mr. DAVIS] is paired with the senior Senator from Illinois [Mr. CULLOM].

The result was announced—yeas 50, nays 26, as follows:

YEAS—50.

Aldrich	Curtis	Jones	Piles
Bacon	Depew	Kean	Scott
Bailey	Dick	Lorimer	Simmons
Bankhead	Dixon	McCumber	Smith, Mich.
Bradley	du Pont	McEnery	Smoot
Brandegee	Elkins	Money	Stephenson
Briggs	Flint	Nelson	Sutherland
Bulkeley	Foster	Newlands	Taylor
Burnham	Frye	Nixon	Warner
Burrows	Gallinger	Oliver	Warren
Burton	Hale	Page	Wetmore
Carter	Heyburn	Penrose	
Crane	Johnson, N. Dak.	Perkins	

NAYS—26.

Beveridge	Clark, Wyo.	Frazier	Martin
Borah	Crawford	Gamble	Overman
Bristow	Culberson	Gore	Shively
Brown	Cummins	Hughes	Smith, S. C.
Burkett	Daniel	Johnston, Ala.	Stone
Chamberlain	Dolliver	La Follette	
Clapp	Fletcher	McLaurin	

NOT VOTING—16.

Bourne	Davis	Owen	Root
Clarke, Ark.	Dillingham	Paynter	Smith, Md.
Clay	Guggenheim	Rayner	Taliaferro
Cullom	Lodge	Richardson	Tillman

So sections 29 and 30 were concurred in.

Mr. ALDRICH. I think this concludes every reserved amendment except the corporation tax.

Mr. CUMMINS. The Senator, I think, is in error. There is section 7.

Mr. DANIEL. I beg leave to remind the Senator——

Mr. ALDRICH. Yes; section 7—the countervailing duty. I ask that section 7 may be concurred in.

Mr. CUMMINS. Mr. President——

Mr. ALDRICH. I should like to say to Senators that I am very much in hopes of disposing of all these matters to-night. Section 7, which is now under consideration, is precisely the terms of the present law, and simply intends to cover bounties paid by other countries upon exportations.

Mr. BAILEY. Do I understand the Senator from Rhode Island to ask for a vote on section 7?

Mr. ALDRICH. I ask for a vote on section 7.

Mr. BAILEY. We have not reached that yet. The next is section 6, which is the corporation tax.

The VICE-PRESIDENT. That is section 6. The Senator from Rhode Island asks that section 7 be taken up.

Mr. ALDRICH. The Senator from Texas is right. I ask that section 7 may be concurred in.

Mr. CUMMINS. I rose simply to correct the misunderstanding of the Senator from Rhode Island wherein he said that the entire bill has been agreed to with the exception of the corporation tax.

Mr. ALDRICH. I meant the reserved amendments. I ask that section 6 may be concurred in.

The VICE-PRESIDENT. The Secretary will read section 6.

Mr. DANIEL. The Senator did not mention among the reserve amendments free leaf tobacco.

Mr. ALDRICH. That is not a reserved amendment. That is an amendment which comes in later.

The VICE-PRESIDENT. The question is on agreeing to section 6.

Mr. BAILEY. Mr. President, I rise to a parliamentary inquiry. I have no disposition to offer a substitute at this point, and thus preclude an amendment except in the first degree. If it is permissible under the rule, I will now offer the substitute which I intend to offer, and which is the original income tax provision as I introduced it, as modified upon the suggestion of the Senator from Iowa [Mr. CUMMINS]. In Committee of the Whole we had a direct vote on the pending amendment against the income tax as a substitute. Now I want to reverse it, and have a direct vote on the income tax as a substitute for the corporation tax; but I will withhold that until any other amendments which Senators desire to offer may be presented and disposed of.

Mr. ALDRICH. I hope there will not be any other amendments.

Mr. BAILEY. I think there are other amendments; but I suppose, as a matter of parliamentary procedure, the friends of the pending proposition are entitled to perfect it before a substitute can be offered.

Mr. ALDRICH. The friends of the proposition, so far as I know, are satisfied with the provisions as they are; and I know of no amendment that will not be antagonized.

Mr. BAILEY. Then, Mr. President——

Mr. CLAPP. Before the Senator——

Mr. BAILEY. One moment. Then, Mr. President, without any debate on that on my part, I shall offer the income-tax amendment as a substitute, if that does not interfere with the subsequent amendments which I know several Senators intend to offer.

Mr. ALDRICH. I assume it will not be necessary to read the substitute offered by the Senator from Texas.

Mr. BAILEY. No.

Mr. ALDRICH. It has already been read.

The VICE-PRESIDENT. Without objection——

Mr. CLAPP. Before the question is put, I should like to take a matter up with the Senator from Texas [Mr. BAILEY].

The VICE-PRESIDENT. Without objection, the amendment offered by the Senator from Texas will not be reread, the Senate understanding what the amendment is. No objection is heard.

Mr. CLAPP. I rise to a parliamentary inquiry. I have an amendment, the purpose of which is to include holding companies within the tax provisions of the amendment. I would not want to lose the opportunity to have that presented and voted upon.

Mr. BAILEY. The very reason I suggest that we take this vote first is that if, by any good fortune or a returning sense of justice on the other side, we should happen to adopt this proposition, then the other amendments would be unnecessary. Consequently, if it is agreeable to everybody, I think we should take a vote on this substitute, and then leave the other amendments intended to perfect this for subsequent consideration. To obviate any question about the parliamentary status, I ask unanimous consent that we may take a vote on my substitute for the pending amendment without interfering with the right of amendment.

The VICE-PRESIDENT. And thereafter amendments may be offered to whichever provisions remain in the bill. Is there objection to the request of the Senator from Texas?

Mr. ALDRICH. What was the request?

Mr. HALE. The Senator from Texas does not need to ask unanimous consent.

The VICE-PRESIDENT. The Chair thinks the Senator does.

Mr. BAILEY. The Chair seemed a little doubtful in his mind, and I thought I would obviate any question by asking unanimous consent.

Mr. ALDRICH. I would suggest that we take a vote now upon the amendment of the Senator from Texas.

The VICE-PRESIDENT. That is precisely what the Senator from Texas asks—unanimous consent that a vote be now taken upon his substitute, and thereafter amendments may be offered to perfect whichever sections remain in the bill. Is there objection?

Mr. NEWLANDS. Mr. President, may I inquire on what page of this bill the corporation tax is?

The VICE-PRESIDENT. On page 371.

Mr. NEWLANDS. Mr. President, I wish to inquire what is the parliamentary status of this question?

The VICE-PRESIDENT. The parliamentary status is that the Senator from Texas [Mr. BAILEY] has asked unanimous consent that the vote may first be taken upon his motion to substitute what is known as the "income-tax amendment," and that thereafter, whether the provision which is now in the bill or his amendment shall be agreed to, whichever provision remains may then be perfected.

Mr. NEWLANDS. I assume that there are now no amendments pending.

The VICE-PRESIDENT. No amendments are now pending.

Mr. BAILEY. But there will be amendments presented.

The VICE-PRESIDENT. Is there objection to the request of the Senator from Texas?

Mr. BORAH. Mr. President, I desire to make a parliamentary inquiry.

The VICE-PRESIDENT. The Senator will state his parliamentary inquiry.

Mr. BORAH. This agreement would not preclude the offering of a substitute for the corporation-tax amendment in case this substitute should be voted down?

The VICE-PRESIDENT. No.

Mr. BACON. It would not.

The VICE-PRESIDENT. The Chair hears no objection to the request of the Senator from Texas [Mr. BAILEY], and it is so ordered.

The question is on agreeing to the substitute offered by the Senator from Texas [Mr. BAILEY].

Mr. BAILEY. I demand the yeas and nays on that question.

The yeas and nays were ordered.

Mr. BAILEY subsequently said: Mr. President, I consented to omit the reading to save time, but I ask that the amendment be inserted in the RECORD immediately preceding the roll call.

The VICE-PRESIDENT. In the absence of objection, that order will be made.

The amendment is to substitute for section 6 the following:

That from and after the 1st day of January, 1910, there shall be assessed, levied, collected, and paid annually upon the gains, profits, and income received in the preceding calendar year by every citizen of the United States, whether residing at home or abroad, and by every person residing in the United States, though not a citizen thereof, a tax of 2 per cent on the amount so received over and above $5,000; and a like tax shall be assessed, levied, collected, and paid annually upon the gains, profits, and income from all property owned and of every business, trade, or profession carried on in the United States by persons residing elsewhere.

Such gains, profits, and income shall include the interest received upon notes, bonds, and all other forms of indebtedness, except the obligations of the United States, States, counties, towns, districts, and municipalities; all amounts received as salary or compensation for services, except such as may have been received by state, county, town, district, or municipal officers; all profits realized within the year from the sale of real estate purchased within two years previous to the close of the year for which the income is estimated; the amount of all premiums on bonds, notes, or coupons; the amount received from the sale of merchandise, live stock, sugar, cotton, wool, butter, cheese, pork, beef, mutton, or other meats, hay, grain, vegetables, or other products; money and the value of all property acquired by gift, bequest, devise, or descent; and all other gains, profits, and income derived from any other kind of property, or from rents, dividends, interest, or from any profession, trade, business, employment, or vocation, carried on in the United States or elsewhere, or from any other source whatever: *Provided, however*, That it shall be proper to deduct from such gains, profits, and income all expenses actually incurred in conducting any business, occupation, or profession, including the amounts actually expended in the purchase or production of merchandise, live stock, and products of every kind; all interest due or paid within the year on existing indebtedness, and all national, state, county, town, district, and municipal taxes, not including those assessed against local benefits; all losses actually sustained during the year, incurred in trade or arising from fires, storms, or shipwreck, and not compensated for by insurance or otherwise; all debts ascertained to be worthless, and all losses within the year on sales of real estate purchased within two years previous to the year for which profits, gains, or income is estimated, but no deduction shall be made for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate; the amount received from any corporation, company, or association as dividends upon the stock of such corporation, company, or association if the tax of 2 per cent has been paid upon its net profits by said corporation, company, or association as required by this act: *Provided further*, That only one deduction of $5,000 shall be made from the aggregate income of all the members of any family composed of one or both parents and one or more minor children, or husband and wife, but guardians shall be allowed to make a deduction in favor of each and every ward, except where two or more wards are comprised in one family and have joint property interests, when the aggregate deduction in their favor shall not exceed $5,000.

That there shall be assessed, levied, and collected for the calendar year 1909, and for each calendar year thereafter, a duty of 2 per cent on the net gains, profits, and income over and above $5,000 of all corporations, companies, or associations organized for pecuniary profit under the laws of the United States or under the laws of any State or Territory or doing business for pecuniary profit in the United States, no matter where or how created or organized, but not including copartnerships. The aforesaid net gains, profits, or income of any such corporation, company, or association shall include its entire gains, profits, and income save and except the amounts paid out during the year for maintenance, operation, and a reasonable allowance for depreciation; and the Secretary of the Treasury is authorized to prescribe and establish such system of bookkeeping and reports as may be necessary to insure

uniformity in this respect: *Provided, however,* That nothing herein contained shall apply to corporations, companies, or associations organized and conducted solely for charitable, religious, or educational purposes, including fraternal beneficiary societies, orders, or associations operating upon the lodge system and providing for the payment of life, sick, accident, and other benefits to the members of such societies, orders, or associations and dependents of such members; nor to the stocks, shares, funds, or securities held by any fiduciary or trustee for charitable, religious, or educational purposes; nor to building and loan associations or companies which make loans only to their shareholders; nor to such savings banks, savings institutions, or societies as shall, first, have no stockholders or members except depositors and no capital except deposits; secondly, shall not receive deposits to an aggregate amount, in any one year, of more than $1,000 from the same depositor; thirdly, shall not allow an accumulation or total of deposits, by any one depositor, exceeding $10,000; fourthly, shall actually divide and distribute to its depositors, ratably to deposits, all the earnings over the necessary and proper expenses of such bank, institution, or society, except such as shall be applied to surplus; fifthly, shall not possess, in any form, a surplus fund exceeding 10 per cent of its aggregate deposits; nor to such savings banks, savings institutions, or societies composed of members who do not participate in the profits thereof and which pay interest or dividends only to their depositors; nor to that part of the business of any savings bank, institution, or other similar association having a capital stock, that is conducted on the mutual plan solely for the benefit of its depositors on such plan, and which shall keep its accounts of its business conducted on such mutual plan separate and apart from its other accounts; nor to any insurance company or association which conducts all its business solely upon the mutual plan and only for the benefit of its policy holders or members, and having no capital stock and no stock or share holders, and holding all its property in trust and in reserve for its policy holders or members; nor to that part of the business of any insurance company having a capital stock and stock and share holders, which is conducted on the mutual plan, separate from its stock plan of insurance, and solely for the benefit of the policy holders and members insured on said mutual plan, and holding all the property belonging to and derived from said mutual part of its business in trust and reserve for the benefit of its policy holders and members insured on said mutual plan; nor to any part of the business of any insurance company having a capital stock and stock and stockholders except as to those gains and profits and income legally distributable to such capital stock and among such stock and stockholders. All states, county, municipal, and town taxes paid by corporations, companies, or associations shall be included in the operating and business expenses of such corporations, companies, or associations: *Provided further,* That any stockholder of any corporation, company, or association the income of which is taxable and taxed under the provisions hereof, whose total income from all sources does not render him liable to the duty herein provided for, may, at any time within six months after the corporation or association of which he is a stockholder has paid the duty herein required, file a written application with the collector of the district in which he resides, in such form as the Secretary of the Treasury may prescribe, showing that his total income for the year under consideration, computed as hereinbefore set forth, did not exceed $5,000; such application shall be under oath and accompanied by such other proof as the rules and regulations may require. If the application and proof are satisfactory to the collector, and are approved by the Secretary of the Treasury, and it further appears that the gains or profits of any share or shares of capital stock owned by any such stockholder in any such corporation have been included in the income upon which the corporation has paid a duty, then the Secretary of the Treasury shall pay to the applicant the proportionate part which his share or shares contributed to such duty; the intent being to exempt any person whose total income, computed as herein provided, is not more than $5,000 from the payment directly or indirectly of an income duty; and the Secretary of the Treasury is expressly authorized to establish such rules and regulations, and to provide such forms, as will enable such persons to present their claims and receive their reimbursement with least difficulty and delay consistent with the due administration of the law.

It shall be the duty of all persons of lawful age having an income of more than $5,000 for the preceding year, computed on the basis herein prescribed, to make and render a list or return, on or before the second Monday in March of every year, in such form and manner as may be directed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to the collector or a deputy collector of the district in which they reside, of the amount of their gains, profits, and income, as aforesaid; and all guardians and trustees, executors, administrators, agents, receivers, and all persons or corporations acting in any fiduciary capacity, shall make and render a list or return, as aforesaid, to the collector or a deputy collector of the district in which such person or corporation acting in a fiduciary capacity resides or does business, of the amount of gains, profits, and income of any minor or person for whom they act, but persons having less than $5,000 income are not required to make such report; and the collector or deputy collector shall require every list or return to be verified by the oath or affirmation of the party rendering it, and may increase the amount of any list or return if he has reason to believe that the same is understated; and in case any such person having a taxable income shall neglect or refuse to make and render such list or return, or shall render a willfully false or fraudulent list or return, it shall be the duty of the collector or deputy collector to make such list according to the best information he can obtain, by the examination of such person or any other evidence, and to add 50 per cent as a penalty to the amount of the tax due on such list in all cases of willful neglect or refusal to make and render a list or return; and in all cases of a willfully false or fraudulent list or return having been rendered to add 100 per cent as a penalty to the amount of tax ascertained to be due, the tax and the additions thereto as a penalty to be assessed and collected in the manner provided for in other cases of willful neglect or refusal to render a list or return, or of rendering a false or fraudulent return: *Provided,* That any person or corporation, in his, her, or its own behalf or as such fiduciary, shall be permitted to declare, under oath or affirmation, the form and manner of which shall be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, that he, she, or his or her or its ward or beneficiary was not possessed of an income of $5,000 liable to be assessed according to the provisions of this act; or may declare that he, she, or it, or his, her, or its ward or beneficiary has been assessed and has paid an income tax elsewhere in the same year, under authority of the United States, upon all his, her, or its gains, profits, and income, and upon all the gains, profits, and income for which he, she, or it is liable as such fiduciary, as prescribed by law; and if the collector or deputy collector shall be satisfied of the truth of the declaration, such person or corporation shall thereupon be exempt from income tax in the said district for that year; or if the list or return of any person or corporation, company, or association shall have been increased by the collector or deputy collector, such person or corporation, company, or association may be permitted to prove the amount of gains, profits, and income liable to be assessed; but such proof shall not be considered as conclusive of the facts, and no deductions claimed in such cases shall be made or allowed until approved by the collector or deputy collector. Any person or company, corporation, or association dissatisfied with the decision of the deputy collector in such cases may appeal to the collector of the district, and his decision thereon, unless reversed by the Commissioner of Internal Revenue, shall be final. If dissatisfied with the decision of the collector, such person or corporation, company, or association may submit the case, with all the papers, to the Commissioner of Internal Revenue for his decision, and may furnish the testimony of witnesses to prove any relevant facts, having served notice to that effect upon the Commissioner of Internal Revenue, as herein prescribed. Such notice shall state the time and place at which, and the officer before whom, the testimony will be taken; the name, age, residence, and business of the proposed witness, with the questions to be propounded to the witness, or a brief statement of the substance of the testimony he is expected to give: *Provided,* That the Government may at the same time and place take testimony upon like notice to rebut the testimony of the witnesses examined by the person taxed. The notice shall be delivered or mailed to the Commissioner of Internal Revenue fifteen days previous to the day fixed for taking the testimony, in which to give, should he so desire, instructions as to the cross-examination of the proposed witness. Whenever practicable, the affidavit or deposition shall be taken before a collector or deputy collector of internal revenue, in which case reasonable notice shall be given to the collector or deputy collector of the time fixed for taking the deposition or affidavit: *Provided further,* That no penalty shall be assessed upon any person or corporation, company, or association for such neglect or refusal or for making or rendering a willfully false or fraudulent return, except after reasonable notice of the time and place of hearing, to be prescribed by the Commissioner of Internal Revenue, so as to give the person charged an opportunity to be heard.

Every corporation, company, or association doing business for profit in the United States shall make and render to the collector of the collection district in which it has its principal office, or if it has no principal office then in which it is transacting business, on or before the second Monday in March in every year, a full return, verified by oath or affirmation, in such form as the Commissioner of Internal Revenue may prescribe, of all the following matters for the whole calendar year next preceding the date of such return:

First. The gross profits of such corporation, company, or association, from all kinds of business of every name and nature.

Second. The expenses of such corporation, company, or association, exclusive of interest, annuities, and dividends.

Third. The amount paid on account of interest, annuities, and dividends, stated separately.

Fourth. The amount paid in salaries, with a list of all officers, employees, and persons receiving more than $5,000 per annum, stating the name and address of such officers, employees, and persons.

Fifth. The net profits of such corporation, company, or association, without allowance for interest, annuities, or dividends.

And any corporation, company, or association failing to comply with the requirements of this section shall forfeit as a penalty the sum of $1,000 and 2 per cent on the amount of taxes due, for each month until the same is paid, the payment of said penalty to be enforced as provided in other cases of neglect and refusal to make return of taxes under the internal-revenue laws.

The taxes herein provided for shall be assessed by the Commissioner of Internal Revenue and collected and paid upon the gains, profits, and income for the year ending the 31st of December next preceding the time for levying, collecting, and paying said tax; shall be due and payable on or before the 1st day of July in each year; and to any sum or sums annually due and unpaid after the 1st day of July as aforesaid, and for ten days after notice and demand thereof by the collector, there shall be added the sum of 5 per cent on the amount of taxes unpaid, and interest at the rate of 1 per cent per month upon said tax from the time the same becomes due, as a penalty, except from the estates of deceased, insane, or insolvent persons.

Any nonresident may receive the benefit of the exemptions hereinbefore provided for by filing with the deputy collector of any district a true list of all his property and sources of income in the United States and complying with the provisions of section — of this act as if a resident. In computinng income he shall include all income from every source, but unless he be a citizen of the United States he shall only pay on that part of the income which is derived from any source in the United States. In case such nonresident fails to file such statement, the collector of each district shall collect the tax on the income derived from property situated in his district subject to income tax, making no allowance for exemptions, and all property belonging to such nonresident shall be liable to distraint for tax: *Provided,* That nonresident corporations shall be subject to the same laws as to tax as resident corporations, and the collection of the tax shall be made in the same manner as provided for collection of taxes against nonresident persons.

It shall be the duty of every collector of internal revenue, to whom any payment of any taxes is made under the provisions of this act, to give to the person making such payment a full written or printed receipt, expressing the amount paid and the particular account for which such payment was made; and whenever such payment is made such collector shall, if required, give a separate receipt for each tax paid by any debtor, on account of payments made to or to be made by him to separate creditors in such form that such debtor can conveniently produce the same separately to his several creditors in satisfaction of their respective demands to the amounts specified in such receipts; and such receipts shall be sufficient evidence in favor of such debtor to justify him in withholding the amount therein expressed from his next payment to his creditor; but such creditor may, upon giving to his debtor a full written receipt, acknowledging the payment to him of whatever sum may be actually paid, and accepting the amount of tax paid as aforesaid (specifying the same) as a further satisfaction of the debt to that amount, require the surrender to him of such collector's receipt.

Sections 3167, 3172, 3173, and 3176 of the Revised Statutes of the United States as amended are hereby amended so as to read as follows:

"SEC. 3167. It shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States to divulge or to make known in any manner whatever not provided by law to any

person the operations, style of work or apparatus of any manufacturer or producer visited by him in the discharge of his official duties, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return by any person or corporation, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof, to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law, any income return or any part thereof or the amount or source of income, profits, losses, or expenditures appearing in any income return; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding $1,000 or by imprisonment not exceeding one year, or both, at the discretion of the court; and if the offender be an officer or employee of the United States he shall be dismissed from office and be incapable thereafter of holding any office under the Government.

"SEC. 3172. Every collector shall, from time to time, cause his deputies to proceed through every part of his district and inquire after and concerning all persons therein who are liable to pay any internal-revenue tax, and all persons owning or having the care and management of any objects liable to pay any tax, and to make a list of such persons and enumerate said objects.

"SEC. 3173. It shall be the duty of any person, partnership, firm, association, or corporation made liable to any duty, special tax, or other tax imposed by law, when not otherwise provided for, in case of a special tax, on or before the 31st day of July in each year, in case of income tax on or before the first Monday of March in each year, and in other cases before the day on which the taxes accrue, to make a list or return, verified by oath or affirmation, to the collector or a deputy collector of the district where located, of the articles or objects, including the amount of annual income, charged with a duty or tax, the quantity of goods, wares, and merchandise made or sold, and charged with a tax, the several rates and aggregate amount, according to the forms and regulations to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, for which such person, partnership, firm, association, or corporation is liable: *Provided*, That if any person liable to pay any duty or tax, or owning, possessing, or having the care or management of property, goods, wares, and merchandise, articles or objects liable to pay any duty, tax, or license, shall fail to make and exhibit a list or return required by law, but shall consent to disclose the particulars of any and all the property, goods, wares, and merchandise, articles, and objects liable to pay any duty or tax, or any business or occupation liable to pay any tax as aforesaid, then, and in that case, it shall be the duty of the collector or deputy collector to make such list of return, which, being distinctly read, consented to, and signed and verified by oath or affirmation by the person so owning, possessing, or having the care and management as aforesaid, may be received as the list of such person: *Provided further*, That in case no annual list or return has been rendered by such person to the collector or deputy collector as required by law, and the person shall be absent from his or her residence or place of business at the time the collector or a deputy collector shall call for the annual list or return, it shall be the duty of such collector or deputy collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit in the nearest post-office a note or memorandum addressed to such person, requiring him or her to render to such collector or deputy collector the list or return required by law, within ten days from the date of such note or memorandum, verified by oath or affirmation. And if any person on being notified or required as aforesaid shall refuse or neglect to render such list or return within the time required as aforesaid or whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or delivers any return which, in the opinion of the collector, is false or fraudulent, or contains any undervaluation or understatement, it shall be lawful for the collector to summon such person, or any other person having possession, custody, or care of books of account containing entries relating to the business of such person, or any other person he may deem proper, to appear before him and produce such books, at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects liable to tax or the returns thereof. The collector may summon any person residing or found within the State in which his district lies; and when the person intended to be summoned does not reside and can not be found within such State, he may enter any collection district where such person may be found, and there make the examination herein authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned.

"SEC. 3176. When any person, corporation, company, or association refuses or neglects to render any return or list required by law, or renders a false or fraudulent return or list, the collector or any deputy collector shall make, according to the best information which he can obtain, including that derived from the evidence elicited by the examination of the collector, and on his own view and information, such list or return, according to the form prescribed, of the income, property, and objects liable to tax owned or possessed or under the care or management of such person, or corporation, company, or association; and the Commissioner of Internal Revenue shall assess all taxes not paid by stamps, including the amount, if any, due for special tax, income or other tax, and in case of any return of a false or fraudulent list or valuation intentionally he shall add 100 per cent to such tax; and in case of a refusal or neglect, except in cases of sickness or absence, to make a list or return, or to verify the same as aforesaid, he shall add 50 per cent to such tax. In case of neglect occasioned by sickness or absence as aforesaid the collector may allow such further time for making and delivering such list or return as he may deem necessary, not exceeding thirty days. The amount so added to the tax shall be collected at the same time and in the same manner as the tax unless the neglect or falsity is discovered after the tax has been paid, in which case the amount so added shall be collected in the same manner as the tax; and the list or return so made and subscribed by such collector or deputy collector shall be held prima facie good and sufficient for all legal purposes."

The Secretary proceeded to call the roll.

Mr. BOURNE (when his name was called). I have a general pair with the senior Senator from Oklahoma [Mr. OWEN]. If he were present and voting, I should vote "nay."

Mr. CURTIS (when his name was called). Upon this question I am paired with the junior Senator from Maryland [Mr. SMITH]. If he were here, I should vote "nay."

Mr. CULBERSON (when Mr. DAVIS's name was called). The Senator from Arkansas [Mr. DAVIS] is paired with the Senator from Illinois [Mr. CULLOM]. If the Senator from Arkansas were present, he would vote "yea."

Mr. PAGE (when Mr. DILLINGHAM's name was called). My colleague [Mr. DILLINGHAM] is unavoidably absent. He is paired with the senior Senator from South Carolina [Mr. TILLMAN]. If present, my colleague would vote "nay."

Mr. GUGGENHEIM (when his name was called). I have a general pair with the senior Senator from Kentucky [Mr. PAYNTER], who is detained from the Chamber by sickness. I shall therefore withhold my vote.

Mr. LODGE (when his name was called). I am paired with the junior Senator from Georgia [Mr. CLAY]. If he were present, I should vote "nay," and he would vote "yea."

Mr. GORE (when Mr. OWEN's name was called). My colleague [Mr. OWEN] is paired with the senior Senator from Oregon [Mr. BOURNE]. If my colleague were present, he would vote "yea."

Mr. BAILEY (when Mr. PAYNTER's name was called). The Senator from Kentucky [Mr. PAYNTER] is ill and is detained from the Senate. If he were present, he would vote "yea."

Mr. OVERMAN (when Mr. RAYNER's name was called). I again announce that the Senator from Maryland [Mr. RAYNER] is paired with the junior Senator from New York [Mr. ROOT].

Mr. DU PONT (when Mr. RICHARDSON's name was called). I announce the pair of my colleague [Mr. RICHARDSON] with the senior Senator from Arkansas [Mr. CLARKE]. If my colleague were present and free to vote, he would vote "nay."

Mr. BAILEY (when Mr. TILLMAN's name was called). The Senator from South Carolina [Mr. TILLMAN] is unavoidably absent. If he were here, he would vote "yea."

The roll call was concluded.

Mr. BACON. I wish to state that my colleague [Mr. CLAY], whose pair has already been announced by the Senator from Massachusetts [Mr. LODGE], would, if present, vote "yea."

The result was announced—yeas 28, nays 47, as follows:

YEAS—28.

Bacon	Culberson	Hughes	Overman
Bailey	Cummins	Johnston, Ala.	Shively
Bankhead	Daniel	La Follette	Simmons
Borah	Fletcher	McLaurin	Smith, S. C.
Bristow	Foster	Martin	Stone
Chamberlain	Frazier	Money	Taliaferro
Clapp	Gore	Newlands	Taylor

NAYS—47.

Aldrich	Clark, Wyo.	Gamble	Penrose
Beveridge	Crane	Hale	Perkins
Bradley	Crawford	Heyburn	Piles
Brandegee	Depew	Johnson, N. Dak.	Scott
Briggs	Dick	Jones	Smith, Mich.
Brown	Dixon	Kean	Smoot
Bulkeley	Dolliver	Lorimer	Stephenson
Burkett	du Pont	McCumber	Sutherland
Burnham	Elkins	Nelson	Warner
Burrows	Flint	Nixon	Warren
Burton	Frye	Oliver	Wetmore
Carter	Gallinger	Page	

NOT VOTING—17.

Bourne	Davis	Owen	Smith, Md.
Clarke, Ark.	Dillingham	Paynter	Tillman
Clay	Guggenheim	Rayner	
Cullom	Lodge	Richardson	
Curtis	McEnery	Root	

So Mr. BAILEY's amendment was rejected.

Mr. CLAPP. Mr. President, when this amendment was before the Senate a few days ago, I made some remarks on the subject and called attention to the fact that there were certain defects in the amendment. One is a very glaring defect that I shall not attempt to amend, because I know it would be absolutely useless to do so. Another defect in the amendment is that it permits the organization of holding companies and exempts such holding companies from any tax where their capital is invested in the stock of subordinate companies. It is urged that that would be double taxation; but the pending amendment is based upon the theory that it is not an income tax, but that it is a tax for the right of being a corporation and doing the business of a corporation. If so, there can be no reason, to my mind, why a great holding corporation, organized to buy a controlling interest in other corporations, should escape any taxation for the privilege or right of being a corporation and engaging in the business of operating and dominating other corporations. I offer the amendment which I send to the desk.

The VICE-PRESIDENT. The Senator from Minnesota offers an amendment, which the Secretary will state.

Mr. CLAPP. I might say, Mr. President, that the effect of my amendment, while it covers several places in the committee amendment, is simply to require holding corporations to pay taxes. In other words, I offer it as one amendment, because

the whole amendment goes to the question of whether a corporation shall be exempted from taxes upon that portion of its revenue which appears to be derived as dividends from stocks of other corporations subject to taxes. On the amendment I ask for the yeas and nays.

Mr. ALDRICH. I suggest that we take a vote on the first half of the Senator's amendment, and then, if the Senate is against it, the Senator will not demand the yeas and nays on the other portion of the amendment.

The VICE-PRESIDENT. The Senator from Minnesota proposes it as one amendment.

Mr. CLAPP. I propose it as one amendment, and I do not call for the yeas and nays but once.

The VICE-PRESIDENT. The Secretary will state the amendment as one amendment.

The SECRETARY. On page 372, strike out all of line 3, after the word "year," in said line; also all of lines 4 and 5 and all of line 6 to the comma preceding the word "or," in said line; also strike out all of line 11, on said page, after the word "year;" and also all of lines 12 and 13 and all of line 14 to the semicolon preceding the word "*Provided*," in said line 14; on page 373, strike out all of line 21, beginning with the word "fifth," and also all of lines 21, 22, and all of line 23 to the word "*Provided*," in line 24; on page 375, strike out all of line 2, beginning with the word "fifth," and all of lines 3, 4, and 5; on page 376, strike out all of line 18 after the word "Columbia," and all of lines 19, 20, 21, 22, and 23 to the semicolon in said line, after the word "section;" also, change the numbers "fifth," "sixth," "seventh," "eighth," and "ninth" as found in line 5, page 376, in lines 5 and 18, page 377, and in lines 10 and 13, on page 378, and the words "fourth," "fifth," "sixth," "seventh," and "eighth," respectively.

Mr. CLAPP. Mr. President, that there may be no misunderstanding about this amendment, and that the Senate may fully understand it, I will say that the amendment as reported by the committee and adopted as in Committee of the Whole exempts from taxation—

> All amounts received by it within the year as dividends upon stock of other corporations, joint-stock companies or associations, or insurance companies, subject to the tax hereby imposed.

This provision, as I said a moment ago, does not purport to be an income tax. It is not a tax upon property, but, clothe it as you may, split hairs as you may, it is a tax upon a corporation for the right and privilege of doing business as a corporation.

My contention is, in the language of the message of the President, that when men get the immunity of stockholders of a corporation, then that corporation as a corporation should pay the tax, regardless of what its capital is invested in or regardless of how much its revenues may be impaired or lessened by the fact that it has invested its capital in something, whether the stock of a corporation, or whether it is tobacco subject to a federal tax, or whether it is whisky subject to a federal tax, or anything which may perchance have been taxed; that when you come to levy an excise tax for the privilege of doing business, you can not trace the antecedents or the genealogy of the funds which come into the possession of that corporation.

Broadly stated, while my amendment covers several places, if the amendment obtains, then a holding company will have to pay a tax for the privilege of being a corporation and for the privilege of doing business as a corporation, just as any other corporation does. It will withdraw from this bill the invitation that is contained in it to organize companies for the purpose of securing the control of stock of other companies, and thus dominating and monopolizing the business of the country.

The VICE-PRESIDENT. The question is on the amendment offered by the Senator from Minnesota, upon which he demands the yeas and nays.

The yeas and nays were ordered.

Mr. DOLLIVER. Mr. President, I was unfortunately detained from the Senate on Monday last, when I intended to submit a few general observations about these new schemes of taxation which have attached themselves to our revision of the tariff. I think, on the whole, we have been very wise to submit, or take the necessary steps toward the submission to the people in the various States of the income-tax question, because if we were relying upon this tax to supplement deficiencies in the revenue, under this measure it is obvious, especially to those of us familiar with the legal aspects of the controversy, that during the next two years, when we will probably need the money most, we will have no money, but will be enjoying the luxury of a very elaborate series of lawsuits.

I do not expect to see our wisdom so developed as to levy a tax of which it can be said, "This is altogether a just and equal tax." I never expect to see a scheme of taxation invented by Congress in which the average man will not ultimately bear the burden of whatever assessment we make. I have never been able to secure, in my own mind, the enthusiasm which some seem to enjoy in the prospect of being able to levy a corporation tax or an income tax which will not ultimately fall upon the man least able to bear it.

In a general way, the income tax is an ideal assessment of public burdens; and yet it is very difficult to draw an income-tax law that does not appear full of inequalities. The income-tax provision which we have pending here, it seems to me, works a hardship upon all salaried people, especially official salaried people, because their income is derived not from their business, but from the total destruction of their business, so far as their private affairs are concerned. It is very difficult to draw an income-tax law in which inequality will not appear, because it is impossible for a statute to recognize the fact that some men need more money than others. A man without a family can bear an assessment without burden, which a man with a large family bears with very great difficulty. A man living in the country needs very little money compared to that required for the man living in a city. An income that is sufficient in Washington is utterly inadequate in New York.

And so, throughout the whole scale of men's occupations and residences, it would be difficult or impossible to assess a tax upon incomes that would present every requisite of equity and equality.

I have a general conclusion in my own mind that a tax assessed upon inheritances has in it elements of equity which are wanting in the other proposed assessments. That is true, whether the assessment be made for the purpose of securing revenue, or whether it is devised as a kind of weapon in the hands of society to discourage the excessive accumulation of money.

I do not believe anyone who has been fortunate enough, by whatever means, to acquire an excessive fortune, running up into the millions, and in some cases in the United States into the hundreds of millions of dollars, has any right to complain if society says to him: "Go on with your labors; go on with your speculations; make everything you can; we despair of being able to control your activities while you are living; but work always with the understanding that the Government of the United States will be represented at your funeral, not among the mourners shedding tears over your departure, but as a sort of court of equity to distribute your estate, to turn back into the Common Treasury the excessive accumulations arising from the activities of your lifetime."

It may be that that weapon will some day be taken in hand by modern society, with a view to preventing, or at least discouraging, the great business activities which in our own day and generation have threatened even the administration of our Government by the extravagance of their accumulations, surpassing even the imagination of other generations.

So, if it is thought necessary to supplement with extraordinary taxes the revenue measure we have before us, I should have been personally inclined to that tax recommended by the President in his inaugural address, which proposed to levy a graduated assessment on the transfer of estates, rising to a substantial tax as the estate rises in amount.

When the question of the corporation tax was before the Senate I was not able for a good many reasons to cast my vote for it, though I did not have the opportunity, or at least did not take the opportunity, of explaining my attitude toward it. If it were possible to draw a corporation tax that would be productive of revenue without working injustice, it would have my hearty consent. But I have made up my mind, after careful study of the question, that the statute which we have put in the way of passage here is so drawn as to produce inequality and injustice. In my humble judgment, it will operate as a tax upon the business investments and enterprises of our people; and in most cases where it places a burden upon those able to bear it, the burden will be immediately transferred to those who are not able to bear it. I believe it will create in our market place a grave sense of injury to find that rich men doing business without incorporation are exempted, while a score or a hundred men and women in very modest circumstances who have invested a small amount in the stock of organized corporations are required to submit to this public assessment.

But I should not have felt constrained to cast my vote against the corporation tax for that reason alone. I believe the great question before the Government and people of the United States to-day is the question of moderating, restraining, regulating,

and in the end prohibiting the consolidation of American businesses in the form of monopolies. I do not believe it is a healthful outlook for this form of government and for these 90,000,000 people to see every avenue of industrial enterprise preempted, intimidated, and controlled by organizations of capital more stupendous in capitalization than ever before entered into the industry and commerce of the world.

If there is one thing before Congress that is important, it is the suggestion of my learned friend from Minnesota that this tax, which purports to be levied upon corporations, has, without the public having a full knowledge of the ultimate significance of the act, deliberately exempted from its burden the very corporations which most need the eye of Congress and the attention of the Government and people of the United States.

What is a "trust," in the modern sense of the word? It is a great corporation which, by one means or another, seeks to control all enterprises engaged in that or a similar line of production. A curious fact about the organization of these great corporations is that they do not need any money at all with which to do business. I think I could overcome my prejudices against a rich man who went about buying up for cash the enterprises in which his neighbors were engaged. But I have not been able to overcome a sort of intuitive prejudice against the exercise by people in our market place of the legal right which brings them together in a corporation, and, by the simple device of exchanging its bonds or stock for a controlling interest in other corporations, enables them to effectually monopolize trade and restrain commerce and to visit upon the American people all the evils attendant upon the speculative trust system of the modern world. Yet we have deliberately said to these corporations that everybody else shall bear the burden of the corporation tax. The humblest stockholder shall feel the weight of this excise. The smallest corporation, within the very narrow limit of $5,000 annual net earnings, shall help bear the expenses of the Government, and shall pay for its corporate organization, for the facility with which it does business. But these great corporations, which have been organized in this market place within the last twenty years, not for the purpose of doing business, but for the purpose of bringing trade into one hand, for the purpose of monopolizing commerce and filling our civilization with all the evils that have attended monopoly in past ages, are deliberately exempted from the burden of this tax.

Why? Because, it is said, the money which they get from the dividends of stock of other corporations which they hold has already been assessed in the subsidiary companies.

If it were true that we are levying here a tax upon money, there would be some force in that argument. If it were true that we are levying a tax upon the incomes of corporations, there would be some force in that argument. If we were taxing the earnings of corporations, it might be essential and wise to inquire into the previous history of these dollars.

But we are not doing that. We are not taxing their money; we are not taxing their incomes; we are not taxing their earnings. I feel that I can speak with a reasonable degree of confidence about that, because the junior Senator from New York [Mr. ROOT], whose skillful hand found a very congenial occupation in drafting this bill, and who defended it on the floor of this Chamber, deliberately stated that it was not the purpose of the bill to tax either the earnings or the incomes of corporations.

What is the purpose of this measure, as explained by one who probably had more to do with its preparation than anyone else within the sound of my voice? I will read his exact words, spoken in this Chamber on the 1st day of July.

The Senator from Indiana [Mr. SHIVELY] had said:

> The profits of this corporation so derived would certainly not be subject to a tax under the rule in the Pollock case, would they?

And the Senator from New York answered:

> The Senator, Mr. President, uses words colloquially when he says "the profits would be subject to a tax." Speaking accurately, it is not the profits that would be subject to the tax, but the privilege or facility of transacting the business through corporate form. It matters not from what source may come the income which is seized upon by the law as a measure for the value of the facility or privilege which is taxed. That, I understand, to be the very question which was decided by the Supreme Court in the Spreckels case, referred to by the Senator from Idaho a few moments ago. In that case the company claimed that certain rentals received by it from the use of a wharf were not to be regarded as liable to be included in the measurement of the tax which was imposed, because, they said, "This is income from real estate, and under the income-tax decision it can not be subjected to such tax." The court said, "No; you got this money in the course of your business; the facility or privilege of doing business is what is taxed, and no matter where you got the money the income is adopted as the measure of the tax."

I believe the Senator from New York uttered words of truth and soberness. If, then, this is not an income tax, if it is not a tax on earnings, if it makes no difference where the money comes from that flows into the corporate treasury, on what theory are we, who sit here representing the American people, exempting from the burden of this tax not little corporations, because they can not afford to pay it, but great corporations, many of them grown so great that they trample under foot the laws of the United States, and have in some instances turned our Government itself into a farce through its impotency in dealing with their pretensions?

I say to you it is not wise; it is not safe; it will not be palatable to the American people to find that the corporations which carry the unnumbered thousands of legitimate and modest business enterprises from one ocean to another are made the victims of this system of taxation, while the corporations that are engaged in reaching out into every corner of the market place, seeking to control every department of business, gathering in the stocks of their competitors, bringing the market place into the control of united interests, consolidating the industries and the enterprises of our people—these overgrown corporations, against which public criticism has been directed for twenty years—are permitted, in the general enthusiasm of our proceedings, to escape untouched by this tax, carrying with them what is more important than money, a recognition by the Government of the United States that their business is a privileged business; that they alone, of all incorporated enterprises, have the right to go free without the annoyance of this assessment; that these great corporations, which control our largest industries, iron and steel and sugar and coal and the scores of others which in their sum represent the larger part of our industrial life and activity, shall mock the Government of the United States, while they watch their humble associates in the market place bearing a burden from which they have been deliberately exempted by the affirmative vote of the Congress of the United States.

I can not consent to it, and I can not believe, having read and reread the message of the President of the United States, that it was in the mind or in the heart of that great popular leader to relieve from the weight of this scheme of taxation those who are best able to bear it, and to put the burden of the Government's assessment upon the humble and unpretentious industries organized in corporate form which are scattered throughout all the cities and all the villages of the United States.

Mr. DIXON. Mr. President, I presume I would be classed among those Senators who have been persuaded away from the income-tax proposition by the message of the President and by his known wish that the corporation tax be substituted for it. I confess that the great virtue of the proposed corporation tax was its publicity feature.

As I understand the theory of the tax, it is a tax on the right of a corporation to do business, coming from the fact that men doing business under corporate form are exempted from certain liability which they assume when doing business in their own individual names. If that be the theory, it strikes me that it is wholly inconsistent to exempt holding corporations from the effect of this bill; and I agree with the Senator from Minnesota——

Mr. CLAPP. I wish to suggest to the Senator that so far as there is any publicity provided for in this amendment, if a great holding corporation, whose entire capital stock was invested in the stock of other corporations, made that return to the Government, it would be the end of publicity as to that corporation.

Mr. DIXON. That is exactly what I myself was starting to say—that so far as holding corporations alone are concerned, unless the amendment of the Senator from Minnesota carries, they are absolutely exempt from the provisions of this amendment, and I think it is most important that this amendment should carry if we are going to apply the same medicine to the holding corporations that we do to ordinary corporations. Some time in this debate—I presume it is not now in order—I expect to submit as an amendment to the bill the inheritance-tax provision, which was put in by the House committee and which was in the bill when it came to the Senate. I presume it would not be in order to do so until the committee amendments are all finished. Personally, what I would like to see would be the corporation tax reduced, keeping it high enough to maintain the publicity feature, and then really raise the revenue from the inheritance tax. That provision I will offer later in the day.

Mr. BULKELEY. I should like to ask the Senator if there is any publicity feature left in the amendment.

Mr. DIXON. I have been persuaded that there is.

Mr. BULKELEY. There was one originally, but has it not all been stricken out of the amendment?

Mr. DIXON. If it has been, then I will say all my sympathy for the amendment is gone. I have been laboring under the belief that the publicity feature was still in the amendment.

Mr. BULKELEY. It is made a penal offense to divulge the contents of one of these returns.

Mr. DIXON. As I understand, the returns are lodged with the Commissioner of Internal Revenue, subject to the control of the administration, subject to a resolution of Congress, in the Senate or the House, whenever we see fit to pass a resolution asking for it. So I do not think the publicity feature has been destroyed.

Mr. BULKELEY. We passed a resolution some time ago and the reply was that the information would not be furnished.

Mr. DIXON. I think in the future if we pass a resolution asking for any information from the Commissioner of Internal Revenue we will probably get it.

Mr. PAGE. I should like to ask the Senator from Minnesota how his amendment will affect a class of business we have in Vermont, which is this: We have a good many savings banks there which invest heavily in mortgage and other notes, but they do a great deal in the way of going into smaller and perhaps sometimes into larger places and aiding in the establishment of national banks. I think the savings banks in Vermont hold hundreds of thuosands of dollars of national-bank stocks. I am not certain how they would be affected, but it seems to me that under the amendment of the Senator from Minnesota great injustice would be done to those savings banks.

Mr. CLAPP. I can only answer the question of the Senator in this way: I do not yet know what the purpose of the Senate is as to taxing savings banks, but under my amendment the savings bank would have to pay a tax on whatever it made, whether it made it off of farmers' mortgages or off of the dividends of stocks in corporations which it might hold.

Mr. CUMMINS. May I attempt to answer the question of the Senator from Vermont?

Mr. PAGE. Just one word.

Mr. CUMMINS. Certainly.

Mr. PAGE. The savings banks of Vermont are of two classes. One class is without stock, but perhaps half the banks of the State have stock. For instance, the Burlington Savings Bank is one without stock. The Burlington Trust Company is a savings bank with stock. I think fully one-half of the banks in our State are banks with stock, and would clearly come within the provisions of this amendment. It would be a matter of great injustice to them if they came within the provisions of the amendment of the Senator from Minnesota. Those savings banks and trust companies go out into other towns and establish other savings banks and trust companies and national banks, and it seems to me it would compel them to pay a double tax were his amendment to prevail.

Mr. CLAPP. I can answer the Senator only in the words of one who has been the recognized leader of the Republican party:

> This is an excise tax upon the privilege of doing business as an artificial entity and of freedom from a general partnership liability enjoyed by those who own the stock.

If that means anything it means that anyone who avails himself of that privilege should pay a tax for it. I may say that that is an extract from the message of President Taft to the Senate.

Mr. DEPEW. Mr. President, stripped of all rhetoric and verbiage, if I understand the amendment of the Senator from Minnesota, it is that if one corporation holds stock of another corporation and the first corporation pays a tax, then the holding corporation shall pay it again.

Mr. CLAPP. To avoid any criticism that I indulge in verbiage, I repeat again the words of the President of the United States:

> This is an excise tax upon the privilege of doing business as an artificial entity and of freedom from a general partnership liability enjoyed by those who own the stock.

If that is verbiage, then I am not a judge of concrete, concise, plain English.

Mr. ALDRICH. Mr. President, it is well known that personally I am not especially enamored with this tax, but I am bound to say that the observations of the Senator from Iowa have no pertinency as to this amendment. No holding company or any other company is exempted from the provisions of the amendment. No large corporations are exempted from it.

Almost every State in the Union permits corporations to hold stock in other corporations. The provisions of this amendment were prepared by the administration and had the approval in every line of the President of the United States, including the provision which it is now sought to vote out of the measure specifically, which has the approval of the President of the United States. This proposition simply, in the case of corporations which have paid the tax once and whose stock is held by another corporation, permits the second holding corporation or the corporation holding the stock to return an exemption on account of that first payment. In other words, it does not enforce double taxation upon these various corporations. Every corporation must pay the tax, and if it is paid once, this act says in effect it shall not from necessity be paid a second time.

Mr. DANIEL. Will the Senator allow me to ask him a question?

Mr. ALDRICH. Certainly.

Mr. DANIEL. Take it the first corporation is a bank or a railroad company, and take it that the holding corporation is simply a corporation dealing in stocks. They are entirely separate businesses and each pays a tax for conducting its business. It is not a second payment of a tax; it is paying the tax on the conduct of its business. While the first pays a tax on the conduct of its business, it is a totally different and separate entity, and they have nothing to do the one with the other.

Mr. ALDRICH. Reverse the case. The Senator from Virginia well knows that all banks throughout the United States, all the trust companies, all the insurance companies, business companies all over the country holding large amounts of personal property, own stock in other corporations. There is not a bank in the Senator's State——

Mr. DANIEL. They are doing a different business from the other corporations.

Mr. ALDRICH. I understand, but they pay a tax on their own profits. If the Senator's suggestion should be carried, they would also pay a tax upon the profits or the earnings of all the corporations in which they hold stock.

Mr. DANIEL. It comes into their hands and those earnings are acquired by them. It becomes their property.

I call the attention of the Senator from Rhode Island and the Senator from New York to a case in which this very matter was involved. It has not been quoted yet, that I know. It is the case of the Society for Savings *v.* Coite, in Sixth Wallace, page 594, where there was a tax on a corporation. It appears that of their deposits, which amounted to $4,758,000, some $500,000 was invested in securities of the United States. Those securities were exempted from all taxation; but when they came into the hands of this corporation and were owned and used by it in its business the tax was proportioned to them, because they were exercising this separate business and franchise. There is a case in point.

Mr. ALDRICH. Take the railroad companies of the Senator's own State. They own stock in each other. That has been done in this country from time immemorial. If you undertake to exclude holding companies, I do not know what the holding company would be in that case. Suppose one railroad company in Virginia holds stock in another railroad company—does the Senator think that both companies ought to pay this tax on the same earnings?

Mr. DANIEL. They are not the same earnings.

Mr. ALDRICH. They are precisely the same. Would you lay a double tax on them?

Mr. DANIEL. All we have to do is to designate them so.

Mr. ALDRICH. They have precisely the same earnings.

Mr. DANIEL. Not at all.

Mr. ALDRICH. That is the practical effect of it, whatever you may call it.

Mr. DANIEL. Take the second company in this way.

Mr. ALDRICH. They are earned but once.

Mr. DANIEL. The second company in this case sums up its earnings, deducts all operating expenses, deducts salaries, and when they have become net a certain amount is in their hands and is taxed; that is all.

Mr. ALDRICH. What happens in case they are the same owners?

Mr. DANIEL. The corporation is a separate entity with a different relation to the subject-matter.

Mr. ALDRICH. The sole purpose of the measure is to prevent double taxation.

Mr. DANIEL. It is not double taxation.

Mr. ALDRICH. It has no other purpose at all.

Mr. DIXON. I wish to ask the Senator from Rhode Island a question. Of course there is no question but that there is a slight double taxation to the holding company, but at the same time it is insignificant as it places itself to my mind.

Suppose the holding corporation owns property in its own right and still, as in the case of banks, owns stock in another corporation. The holding company will pay its 2 per cent on its net earnings from its own individual investment, from the revenue it receives as the holding company from stock in the other corporation. Suppose the other corporation pays 6 per cent dividends to the holding corporation. On that 6 per cent it pays only 2 per cent of the 6 per cent, which, as a matter of

fact, would be one three-hundredths of 1 per cent. Only to that extent I believe is that done. The tax is slight; and unless this is done the corporation that is purely a holding corporation escapes almost entirely. The amount is infinitesimal.

Mr. ALDRICH. I think the Senator is entirely mistaken in his calculation. If one corporation pays a tax upon its earnings of 2 per cent, the next corporation pays a tax of 2 per cent on the same earnings.

Mr. DIXON. But, Mr. President——

Mr. ALDRICH. On the same earnings exactly. It is an exact duplication of taxation.

Mr. DIXON. I surely am right in my calculation. Suppose the subsidiary companies pay a net 6 per cent dividend to the holding company. The holding company——

Mr. ALDRICH. The subsidiary company pays 2 per cent of its earnings to the Government, and the whole 6 per cent goes to the holding company, and the holding company pays precisely the same tax over. It pays that exact amount in addition to the first tax, making a precise duplication of the tax.

Mr. DIXON. But if the holding company receives a thousand dollars on a 6 per cent dividend from the subsidiary company and pays 2 per cent on that thousand dollars to the Government, it is only 2 per cent of 6 per cent.

Mr. ALDRICH. Oh, no. That is all it is in the first company, and it is the same payment to the second company, and the same payment to the third company. You might go on indefinitely multiplying the taxation through a whole series of companies. The taxation is precisely the same, and it is duplicated, and it might be reduplicated if the suggestions which have been made here should be adopted.

Mr. CUMMINS. May I answer the suggestion of the Senator from Rhode Island? If this is an income tax, it is a tax on property or incomes, and the Senator from Rhode Island is right.

Mr. ALDRICH. The very measure suggested by the Senator from Texas and the Senator from Iowa himself exempted this duplication of taxes in precisely the same way that they are exempted here.

Mr. CUMMINS. But ours was an income tax.

Mr. ALDRICH. What is the use of playing upon words? I want to know whether an income tax is not a tax of the same kind, paying out of the same fund upon the profits. It makes no difference what you call it. It is only a question of words. The Senator from Iowa may say this is an income tax. I may say it is a corporation tax. Another may say that it is a tax upon earnings. Another may say that it is an excise tax. You may characterize it as you please; it is a precise duplication. The Senator from Iowa and the Senator from Texas recognized the equity in that case and made the same exemptions that are made under the proposition which comes from the President and is recommended by the administration.

Mr. CUMMINS. I agree that if this is an income tax, it is a duplication of taxation and is unfair and unjust; but we have been amused here in the last ten days with a fine and nice argument intended to prove that it was not an income tax, that it was not an imposition upon property, that the corporations were classified and assessed for the privilege of existing, for the privilege of doing business.

Mr. ALDRICH. Does the Senator insist——

Mr. CUMMINS. And it was said that they could well afford to pay an excise tax for the privilege of doing business as corporations, measured by 2 per cent of their net income. If that argument is sound, unless it is to be abandoned as it ought to be abandoned, then there is no duplication here.

Mr. ALDRICH. Does the Senator think that an "excise tax," if you may call it such, ought to be imposed upon different equitable principles from an "income tax," as he calls it?

Mr. CUMMINS. Certainly, it ought to be imposed upon different principles.

Mr. ALDRICH. Oh, no; not different equitable principles. If you have double taxation under an income tax, then I can see some argument why you should have double taxation under an excise tax; but if you exempt property on income or earnings, or whatever you please, in one case, you ought to exempt it in the other.

Mr. CUMMINS. If the Senator will allow me, if it is an excise tax upon a privilege or facility of doing business as a corporation, it is not double taxation. It only becomes double taxation when it is asserted and admitted that it is an income tax laid upon property. Now, you are attempting to sustain the validity of this tax. You are attempting to make the people of the country believe that this tax will meet the decision of the Supreme Court by making the miserable distinction the Senator from Rhode Island has just pointed out. I agree with him that we have come to a time now when we can dismiss these words. It is not an excise tax. It is an income tax.

Mr. FLINT. Mr. President——

The VICE-PRESIDENT. Does the Senator from Iowa yield to the Senator from California?

Mr. CUMMINS. I do.

Mr. FLINT. I believe it is an excise tax, and the reason why we have eliminated the holding companies is because we believe as a matter of equity they should be eliminated, just as we have eliminated mutual concerns and building and loan concerns. It is a matter of classification that we have a right to make. We have made that classification, and as a matter of equity we have eliminated the holding company so that it would not be in a position of having double taxation imposed upon it.

Mr. CUMMINS. While not agreeing at all with the interpretation put upon this proposed act by the Senator from California, I agree that if it is an excise tax equitable principles ought to be employed. There are some companies which hold the stock of other companies that equitably ought not to be required to pay an excise tax measured by the income upon that stock. But where there is one of such companies there are a score of companies which hold stock of other associations which ought to be compelled to pay the tax.

I will not give a concrete instance, because it might seem to be invidious; but if a company is organized for the purpose of consolidating a dozen other companies with a view to controlling the business in which those companies are engaged for the purpose of being able to direct through a single board the management of the entire field of industry, will the Senator from California insist that equity requires such a company to be exempted from the payment of the tax here imposed? Does he not know that aside from the contravention of public policy involved in such an organization the privilege enjoyed is of priceless value, and instead of being taxed at 2 per cent on the net earnings it ought to be taxed at 10 or 15 per cent on the net earnings, that it ought to be taxed so heavily that such companies would become not only unfashionable but unprofitable as well?

If you are attempting to do equity, then undertake to distinguish between these companies that were suggested by the Senator from Vermont [Mr. PAGE]. I agree with him that there is something to be said in favor of the little savings banks which hold the stock of other companies. That can not be said of these immense and growing concerns that are using this method of incorporation to throttle the business of the United States and stifle and annihilate competition in all our principal fields of industry. If you are depending upon equity, then make the discrimination that equity requires.

Mr. DANIEL. Mr. President, I simply wish to dissipate the idea that there is any suggestion of double taxation when a holding corporation owns bonds or stocks of another company. I think I can make it so clear that the Senator from Rhode Island and the Senator from New York will see it.

This is a tax for carrying on a vocation or profession. It is only upon the net profit of that particular profession which pays this excise tax in the nature of a license tax. It is exactly like a tax on a lawyer for exercising his profession, which may be measured by his profits, by his gross receipts, or by any other plan adopted.

Now, suppose we have two corporations. One is corporation A. It is in the brokerage business; it deals in bonds and stocks. Amongst its assets are many bonds in corporation B, which is a railroad corporation. Suppose, when you add up all the revenues derived from the bonds and stocks and all the other business, there are no net profits at all. In that case the corporation A will pay nothing; in that case the corporation B will pay nothing; and what you call "double taxation" may be no taxation whatever. It may be below zero.

Now, take the other case, in which both make money. The broker is making money because he is engaged in the business of the buying and selling and holding of bonds. The railroad company is making money. Though the railroad company may have been taxed as to its bonds, why should not the broker pay a tax as to the exercise of his profession? He is not taxed on the bonds; it is simply the net result of what is in his pocket from the exercise of his profession. A man who can not see that can not count two; his head is melted into somebody else's head and has lost its identity in the hot weather and in the asphyxiation of the closed committee room.

Mr. NEWLANDS. Mr. President, there are three kinds of holding companies. One is represented by insurance companies, another by holding railroad companies, another by the great combinations which hold the stock of other companies for the purpose of monopolizing production.

It is very clear, so far as the first class of corporations is concerned, such as insurance companies, that it would be unjust to prevent such companies from exempting from their income the dividends received from corporations which pay this tax, for insurance companies are organized for the purpose of investing the money of their policy holders in the stocks of other corporations, and such investment is a perfectly legitimate one and is sanctioned by law.

As to railroad holding corporations, that is a device which has grown up from the fact that the United States has never as yet passed a national corporation law for the incorporation of interstate railroads; and of course it is necessary that in some way the union of railroads organized in different States, but when joined, forming continuous lines, should be accomplished in order that the great systems, extending from ocean to ocean and through many States, may be organized in such a way as to meet the convenience of the public.

Therefore certain States grant charters, enabling such corporations to hold the stocks of other railroad corporations and to operate the roads owned by various railroad corporations as an entire system. That form of holding corporation, though it is a clumsy substitute for a national corporation and has led to many evils in overcapitalization and escape from proper control, meets the convenience of the public; and as the various constituent corporations under it are subject to public regulation and control as natural monopolies, and the holding company itself, if it operates the continuous line, is also subject to public regulation and control, no moral objection can be made to that form of a holding company. It would be unjust as to that form of a holding company to compel it to pay another tax upon the income received from the dividends of corporations which have already paid this tax.

We now come to the monopolistic holding company, the great trust organized like the steel trust, for the purpose of holding the stock of other constituent companies, with a view to controlling and monopolizing production in certain lines. Such an organization is not sustained by any moral consideration and is against public policy and the spirit of the interstate-commerce law.

The objection made to taxing such a company is that you give sanction to it, or, at all events, recognize it as a legalized form of combination. You may not sanction it; but you, by the law, recognize its existence. You recognize that existence without reprobation. Such an organization has a privilege of vast value, if it is to be regarded as legal; for, whilst it has no property except the stock of other corporations and no income except that which it derives from other corporations which may pay the tax, yet the privilege of combination itself is one of vast value. You can not reconcile the exemption of such a corporation from a direct excise tax upon that vast privilege under this proposed law.

Therefore, it seems to me, the only way to do is to support the amendment of the Senator from Minnesota [Mr. CLAPP], to withdraw this particular exemption of income from the bill, and afterwards to shape the bill in such a way as to permit the exemption of the income derived from stocks owned by insurance companies or savings banks organized for profit; to permit the exemption of the income derived by these great holding railroad corporations from the dividends of other corporations subsidiary to it, and then, if we propose to recognize also the only form of holding companies that is subject to criticism—the holding corporations organized for monopolistic purposes—we should frame a tax especially designed to reach the value of the great privilege which they enjoy.

Mr. ALDRICH. Mr. President, I am so anxious to get through with the consideration of this bill that I am going to accept the amendment of the Senator from Minnesota [Mr. CLAPP].

Mr. BAILEY. I would like that acceptance to be accompanied with some kind of assurance that it is not going to be sacrificed in conference.

The VICE-PRESIDENT. The yeas and nays have already been ordered on the amendment.

Mr. ALDRICH. I think that order can be withdrawn.

The VICE-PRESIDENT. Is there objection to annulling the order for the yeas and nays? No objection is heard. The question is on the amendment of the Senator from Minnesota [Mr. CLAPP].

Mr. BAILEY. Mr. President, of course, if the Senator from Rhode Island says that he accepts this amendment in good faith, I will accept his statement; but I know how often, when we are anxious to get through and are in a hurry, that amendments are accepted with a view to disposing of them in conference.

Mr. ALDRICH. I say, speaking only for myself, that it is my purpose to take care of all the Senate amendments that are made to this bill to the best of my ability, and to try to impress upon the managers of the conference on the part of the House that they ought to accept the Senate amendments. That is my deliberate purpose, and I expect to do that with all the earnestness and skill at my command. That applies to this amendment as well as to everything else.

Mr. BAILEY. Then I shall offer no objection; but, as supporting the Senator from Rhode Island when he comes to that contest, I want to suggest to him that the holding company is the last form of business organization in this country entitled to an exemption. In many of the States they are illegal. The Supreme Court of the United States, in a case of vast importance, held that a holding company designed to control certain competing transportation companies, was an illegal combination and entered an order against it that resulted in its practical dissolution. I believe that according to the law in a majority of the States a holding company is contrary to sound public policy; and all of them will so ordain sooner or later.

I have no question in my mind that at common law one corporation had no power to hold stock in another corporation. In making that statement, I do not forget, of course, that the organization of corporations in this country is a matter regulated by statute; but still, in the absence of statutory authority to that effect, I have no doubt that it is unlawful for one corporation to acquire and hold the stock of another corporation. With this public policy in force in a majority of the States, sustained by a decision of the Supreme Court, I sincerely hope that the Finance Committee will adhere to the amendment which they now accept.

Mr. CULBERSON obtained the floor.

Mr. ALDRICH. I ask——

Mr. CULBERSON. I desire to offer an amendment.

Mr. ALDRICH. I will say to the Senator from Texas that I am extremely anxious to dispose of two or three matters which are still unsettled, and I hope the Senator——

Mr. CULBERSON. I hope the Senator will accept the amendment which I will propose. I have been trying to offer it for half an hour.

The VICE-PRESIDENT. The amendment of the Senator from Minnesota [Mr. CLAPP] has not yet been disposed of.

Mr. CLAPP. I understood that the Senator from Rhode Island had accepted the amendment.

Mr. CULBERSON. I understood the amendment had been accepted.

The VICE-PRESIDENT. It has not been voted on. The Chair was about to put the question.

Mr. MONEY. Mr. President, I want to say a word at this point, in view of what has just been said by the Senator from Rhode Island [Mr. ALDRICH] in reference to the interrogation of the Senator from Texas [Mr. BAILEY]. I want it to be understood now, as I always have understood it, that the conferees are compelled to carry out the wishes of the Senate without regard to their individual opinions or wishes.

Mr. ALDRICH. That is undoubtedly so.

Mr. MONEY. That is so.

Mr. ALDRICH. That is my understanding.

Mr. MONEY. Then, there is no necessity for any assurance from anybody who may have the honor to serve as a conferee that he will do anything else except to carry out the wishes of the body to which he belongs.

Mr. ALDRICH. Unquestionably.

Mr. MONEY. So that we may all go that far with the full assurance that the conferees on the part of the Senate will record there the wishes of the Senate as expressed here; and of course if there can not be a decision made without great recession on one side or on both sides, the body which they represent will be informed of that fact.

Mr. BULKELEY. Mr. President, the acceptance by the committee of the amendment offered by the Senator from Minnesota [Mr. CLAPP], to my mind, renders this bill more obnoxious in its every feature than anything that has been injected into it up to this time.

Mr. ALDRICH. Will the Senator permit me to make a statement?

Mr. BULKELEY. Certainly.

Mr. ALDRICH. It must be evident to every Member of the Senate that this debate must close. It should close very soon, and I think we are all anxious that it should. Of course if we are to discuss all these propositions indefinitely, whether they are before the Senate or not, we are not likely to close this bill this week or any other week. I am extremely anxious to dispose of two or three other matters, which are still open, with a

view to securing a vote upon this bill either to-day or to-morrow. So I hope that Senators will, if possible, not discuss the paragraphs, but let us vote upon the bill after disposing of such amendments as may be offered.

Mr. BULKELEY. Mr. President, I will be glad to comply with the wishes of the chairman of the committee; but I have two or three amendments which I regard as very much more meritorious than the one which the committee have just accepted. They are designed to remedy what I regard, and the people of my State regard, as a very great injustice.

I have no idea that this bill can be brought to a vote to-night, for the amendments which I have it in mind to propose will probably involve considerable discussion; but if I felt I could have the same assurance that the distinguished Senator from Minnesota [Mr. CLAPP] has received, in having his amendment accepted, that my amendments will receive the urgent attention and support of the conference committee when this bill gets into that stage, I might be willing to dispose of the amendments to which I refer without any lengthy discussion.

There is pending, Mr. President, as I understand at the present time, an amendment offered by the Senator from Minnesota.

The VICE-PRESIDENT. The Senator from Connecticut is correct. The Chair supposed he was discussing it.

Mr. BULKELEY. We discuss things in a roundabout way sometimes, and reach other things in the course of the discussion than the one thing that is immediately before us. If I have had a remonstrance of any kind from my constituents in Connecticut, it has been against the character of amendment which is now proposed; and I should feel derelict in my duty if I failed to enter my earnest protest against its adoption.

It is not necessary for me, nor would it be in good taste, perhaps, to discuss the legal aspects of the pending amendment. They have been ably discussed while the bill was considered as in Committee of the Whole and have been gently touched upon this afternoon by the distinguished gentlemen who have spoken; but when an effort is made, in what seems to me a roundabout way, to lay an income tax under the guise of being something else, it seems well enough for us to stop in the discussion of this bill to think what we are doing and not attempt to go boldly forward because we are disturbed by the conditions of the atmosphere or by our longing to get to our homes.

So I hope, Mr. President, that the pending amendment, while it has been accepted by the committee as a part of the bill itself, will not meet the approbation of the Senate, though I am very much afraid that with the Senator from Texas [Mr. BAILEY], the Senator from Rhode Island [Mr. ALDRICH], and the Senator from Minnesota [Mr. CLAPP] all in accord it is likely that this measure will be put into the bill.

The VICE-PRESIDENT. The question is on agreeing to the amendment offered by the Senator from Minnesota [Mr. CLAPP].

Mr. CULBERSON. Mr. President, I find upon consideration of the amendment offered by the Senator from Minnesota, [Mr. CLAPP] that, with the assurance that it will be accepted, the amendment which I had intended to offer is unnecessary. It is quite brief, however, and I will read it——

Mr. ALDRICH. I hope the Senator will not do that. Let it be printed in the RECORD.

Mr. CULBERSON. I prefer to read it, Mr. President.

Mr. ALDRICH. Very well.

Mr. CULBERSON. Add after section 6 the following:

Nothing in this section is intended or shall be construed to legalize holding corporations when operating in violation of other laws of the United States.

As I have said, the provision of paragraph 2 of section 6, which led to the belief that it might authorize holding companies, having been stricken out, there is no necessity for me to press the amendment which I had intended to offer.

The VICE-PRESIDENT. The question is on the amendment offered by the Senator from Minnesota.

The amendment was agreed to.

Mr. BACON. I have a short amendment which I desire to offer, and I ask that it may be read. It should come in at the conclusion of the section.

The VICE-PRESIDENT. The Senator from Georgia offers an amendment to section 6, which will be stated.

The SECRETARY. Add at the end of section 6 the following proviso:

Provided, That the provisions of this section shall not apply to any corporation or association designed and operated solely for mercantile business, the gross sales of which do not exceed $150,000 per annum.

Mr. ALDRICH. Mr. President——

The VICE-PRESIDENT. Does the Senator from Georgia yield to the Senator from Rhode Island?

Mr. BACON. I do.

Mr. ALDRICH. I rose for the purpose of moving to lay the amendment on the table, and I give notice that I intend to move to lay all further amendments on the table.

Mr. BACON. I simply desire to ask for the yeas and nays on it. That would be just as expeditious as a vote on the motion to lay on the table.

The VICE-PRESIDENT. The Senator from Rhode Island merely gave notice of his intention. The Senator has not made the motion.

Mr. ALDRICH. I did not like to cut the Senator off.

The VICE-PRESIDENT. The question is on the amendment of the Senator from Georgia [Mr. BACON], upon which he asks for the yeas and nays.

The yeas and nays were ordered.

The Secretary proceeded to call the roll, and Mr. ALDRICH answered to his name.

Mr. BULKELEY. Mr. President, may we have the amendment reported?

The VICE-PRESIDENT. The roll call has begun; but if there be no objection, the amendment will be again reported, for information.

The SECRETARY. At the end of the section it is proposed to add the following:

Provided, That the provisions of this section shall not apply to any corporation or association designed and operated solely for mercantile business, the gross sales of which do not exceed $150,000 per annum.

Mr. BACON. With the consent of the Senate I will modify the amendment and make it refer to all corporations having a gross income not exceeding $150,000.

Mr. ALDRICH. That can not be done.

The VICE-PRESIDENT. The roll-call has already been begun, and a response has been made. Nothing further can be done except by unanimous consent.

Mr. BACON. I ask unanimous consent.

Mr. ALDRICH. I object, Mr. President.

The VICE-PRESIDENT. Objection is made. The Secretary will continue the roll call.

The Secretary resumed the calling of the roll.

Mr. BOURNE (when his name was called). I have a general pair with the senior Senator from Oklahoma [Mr. OWEN]. If he were present, I should vote "nay."

Mr. DILLINGHAM (when his name was called). I have a general pair with the senior Senator from South Carolina [Mr. TILLMAN], who is absent. I therefore withhold my vote.

Mr. GUGGENHEIM (when his name was called). I again announce my general pair.

Mr. LODGE (when his name was called). I have a general pair with the Senator from Georgia [Mr. CLAY]. If he were present, I should vote "nay" and he would vote "yea."

Mr. MARTIN (when his name was called). I have a general pair with the junior Senator from Nevada [Mr. NIXON]. In his absence I withhold my vote. If he were present, I should vote "yea."

The roll call was concluded.

Mr. GORE. I wish to announce that if my colleague [Mr. OWEN] were present, he would vote "yea."

Mr. JONES (after having voted in the negative). I ask if the junior Senator from South Carolina [Mr. SMITH] has voted?

The VICE-PRESIDENT. He has not voted.

Mr. JONES. I have a general pair with that Senator, and therefore withdraw my vote.

Mr. CULBERSON. The Senator from Arkansas [Mr. DAVIS] is absent and is paired with the Senator from Illinois [Mr. CULLOM]. If the Senator from Arkansas were present, he would vote "yea."

The result was announced—yeas 27, nays 45, as follows:

YEAS—27.

Bacon	Cummins	Gore	Overman
Bailey	Curtis	Johnston, Ala.	Shively
Bankhead	Daniel	La Follette	Simmons
Borah	Dolliver	McEnery	Stone
Chamberlain	Fletcher	McLaurin	Taliaferro
Clapp	Foster	Money	Taylor
Culberson	Frazier	Newlands	

NAYS—45.

Aldrich	Carter	Gamble	Piles
Beveridge	Clark, Wyo.	Hale	Scott
Bradley	Crane	Heyburn	Smith, Mich.
Brandegee	Crawford	Johnson, N. Dak.	Smoot
Briggs	Depew	Kean	Stephenson
Bristow	Dick	Lorimer	Sutherland
Brown	Dixon	McCumber	Warner
Bulkeley	du Pont	Nelson	Warren
Burkett	Elkins	Oliver	Wetmore
Burnham	Flint	Page	
Burrows	Frye	Penrose	
Burton	Gallinger	Perkins	

NOT VOTING—20.

Bourne	Dillingham	Martin	Richardson
Clarke, Ark.	Guggenheim	Nixon	Root
Clay	Hughes	Owen	Smith, Md.
Cullom	Jones	Paynter	Smith, S. C.
Davis	Lodge	Rayner	Tillman

So Mr. BACON's amendment was rejected.

Mr. NEWLANDS. Mr. President, I offer the following amendment: Strike out all after the word "association," in line 14, section 6, page 371, down to the word "Columbia," in line 21, and insert in lieu thereof the words:

Engaged in the business of refining oil or sugar, or in the manufacture of any commodity included in the dutiable list of this act, whose gross receipts exceed $250,000 per annum.

The VICE-PRESIDENT. The Secretary will report the amendment offered by the Senator from Nevada.

The SECRETARY. On page 371, after the word "association" and the comma in line 14, strike out all down to and including the words "District of Columbia," at the end of line 21, and insert:

Engaged in the business of refining oil or sugar, or in the manufacture of any commodity included in the dutiable list of this act, whose gross receipts exceed $250,000 per annum.

Mr. NEWLANDS. Mr. President, the amendment I offer makes this excise tax of 2 per cent on the privilege of doing business by corporations apply only to those corporations that are engaged in the business of refining oil or sugar, or in the manufacture of any commodity covered by the dutiable list of the bill. The Senate will recall that in the Spreckels case such a tax was sustained—a tax upon oil refiners and sugar refiners whose gross receipts exceeded $250,000 annually. This amendment simply extends that tax to all corporations engaged in the manufacture of commodities covered by the tariff bill.

In this connection I wish simply to state briefly that the schedule presented by the Finance Committee of the production in this country of commodities covered by the tariff act shows that the total production amounted to about $13,000,000,000, and that the total imports of such commodities equaled about one-twentieth of the domestic production, and that the amount expended for wages in producing these commodities aggregating over $13,000,000,000 amounted to about $2,500,000,000.

This act imposes a duty of about 45 per cent upon the foreign commodities which come in competition with our domestic production. So that it is safe to say that the value of this $13,000,000,000 worth of domestic products would be counterbalanced on the outside of our tariff wall by an equal amount of commodities valued at only $9,000,000,000. In other words, by the imposition of these duties we give to the American manufacturers the right to add to the foreign price of these commodities a total of over $4,000,000,000 annually—an amount more than sufficient to pay for the entire labor cost of all the commodities, aggregating, according to the statement of the Finance Committee, two billions and a half.

Of all the privileges enjoyed by corporations, the most valuable is this charter, given to the domestic corporations, which permits them to impose upon domestic consumers a charge of nearly $4,000,000,000 in excess of what they would pay if the competitive products on the outside were given free entry.

It therefore seems to me it is but fair to exact from these great domestic corporations whose gross receipts exceed $250,000 per annum the moderate tax of only 2 per cent upon their net income—in other words, one-fiftieth of their entire profits. For while the Government of the United States will collect from them a sum not exceeding $50,000,000 per annum, we have given them a charter to tax the American people to the extent of $4,000,000,000 per annum.

Mr. ALDRICH. Mr. President, I move to lay the amendment on the table.

The VICE-PRESIDENT. The Senator from Rhode Island moves to lay the amendment on the table.

Mr. NEWLANDS. On that I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. BACON. As I understand, the roll call is on the motion to lay on the table?

The VICE-PRESIDENT. On the motion to lay on the table.

Mr. BACON. Those who are opposed to laying the amendment on the table will vote "nay?"

The VICE-PRESIDENT. They will.

Mr. BACON. I take the liberty of making that inquiry, because I am satisfied the matter is not generally understood.

The VICE-PRESIDENT. Very well.

The Secretary proceeded to call the roll.

Mr. BOURNE (when his name was called). I have a general pair with the senior Senator from Oklahoma [Mr. OWEN]. If he were here and voting, I should vote "yea."

Mr. CLAPP (when his name was called). I have just come into the Chamber, and I do not know what is the proposition.

The VICE-PRESIDENT. The question is on agreeing to the motion of the Senator from Rhode Island to lay on the table the amendment offered by the Senator from Nevada.

Mr. CLAPP. I do not know what the amendment is, and therefore ask to be excused.

Mr. DILLINGHAM (when his name was called). My pair, the senior Senator from South Carolina [Mr. TILLMAN], being absent, I withhold my vote.

Mr. GUGGENHEIM (when his name was called). I make the same announcement as on the previous vote.

Mr. LODGE (when his name was called). I have a general pair with the Senator from Georgia [Mr. CLAY]. If he were present, I should vote "yea" and he would vote "nay."

Mr. MARTIN (when his name was called). In the absence of the junior Senator from Nevada [Mr. NIXON], with whom I am paired, I withhold my vote.

Mr. GORE (when Mr. OWEN's name was called). If my colleague were present, he would vote "nay."

Mr. WARREN (when his name was called). Having a pair with the Senator from Mississippi [Mr. MONEY], I withhold my vote.

The roll call was concluded.

Mr. OVERMAN. I again announce that the senior Senator from Maryland [Mr. RAYNER] is unavoidably absent, and is paired with the Senator from New York [Mr. ROOT].

Mr. BACON. I desire to say that if my colleague [Mr. CLAY] were present, he would vote "nay."

The result was announced—yeas 46, nays 24, as follows:

YEAS—46.

Aldrich	Clark, Wyo.	Gamble	Penrose
Beveridge	Crane	Hale	Perkins
Bradley	Crawford	Heyburn	Piles
Brandegee	Curtis	Johnson, N. Dak.	Scott
Briggs	Depew	Jones	Smith, Mich.
Brown	Dick	Kean	Smoot
Bulkeley	Dixon	Lorimer	Stephenson
Burkett	du Pont	McCumber	Sutherland
Burnham	Elkins	McEnery	Warner
Burrows	Flint	Nelson	Wetmore
Burton	Frye	Oliver	
Carter	Gallinger	Page	

NAYS—24.

Bacon	Cummins	Hughes	Shively
Bailey	Dolliver	Johnston, Ala.	Simmons
Bankhead	Fletcher	La Follette	Smith, S. C.
Bristow	Foster	McLaurin	Stone
Chamberlain	Frazier	Newlands	Taliaferro
Culberson	Gore	Overman	Taylor

NOT VOTING—22.

Borah	Daniel	Money	Root
Bourne	Davis	Nixon	Smith, Md.
Clapp	Dillingham	Owen	Tillman
Clarke, Ark	Guggenheim	Paynter	Warren
Clay	Lodge	Rayner	
Cullom	Martin	Richardson	

So the amendment submitted by Mr. NEWLANDS was laid on the table.

Mr. McLAURIN. Mr. President, I have a short amendment here which I think the committee ought to accept. There are a great many small corporations that do not earn as much as $5,000 net. A great many of them do not earn that much gross. They are little drug-store corporations, mercantile corporations, farming corporations, and newspaper corporations. A great many of them are small newspapers that do not earn a net income of $5,000 and have not a capital of $50,000.

I do not see why such corporations as that should be worried by making out returns. If the president or principal officer will make affidavit that there is not $50,000 worth of stock and that the net income is not $5,000, then I do not think they ought to be required to make the return unless the Commissioner of Internal Revenue shall make a special order for that purpose. If there is any cause to suspect that the affidavit is not correct as to the amount of stock or as to the amount of net income, he could make an order requiring the return to be made to him and look into that. But no good purpose can be served by the small corporations going to the expense of making these returns; and it is also an expense to the Government that ought not to be incurred to investigate the matter.

I ask that the amendment be read, and I ask the chairman of the committee to pay strict attention to it and that he accept it. If he does not, I shall ask for a yea-and-nay vote on it.

Mr. ALDRICH. I move that the amendment be laid on the table.

Mr. McLAURIN. The Senator had better let it be read first.

The VICE-PRESIDENT. The Secretary will read the amendment.

The SECRETARY. On page 382, line 25, after the word "prosecution," at the end of the paragraph, insert:

If the president, vice-president, or other principal officer shall, within the time required herein for making return as herein required, make affidavit that the capital stock of the corporation does not exceed

$50,000, and that its net income does not exceed $5,000 for the year, the said return herein required need not be made, unless specially required by the Commissioner of Internal Revenue and notice thereof be served on such corporation. Such requirement by said commissioner shall only be made when he has good reason to believe said affidavit untrue as to the amount of stock or net income.

The VICE-PRESIDENT. The Senator from Rhode Island moves to lay the amendment on the table.

Mr. McLAURIN. On that I ask for the yeas and nays.

The yeas and nays were ordered, and the Secretary proceeded to call the roll.

Mr. BOURNE (when his name was called). I have a general pair with the senior Senator from Oklahoma [Mr. OWEN]. If he were here and voting, I should vote "yea."

Mr. DILLINGHAM (when his name was called). Having a general pair with the senior Senator from South Carolina [Mr. TILLMAN], I withhold my vote.

Mr. GUGGENHEIM (when his name was called). I again announce my general pair with the Senator from Kentucky [Mr. PAYNTER].

Mr. LODGE (when his name was called). I again announce my pair with the Senator from Georgia [Mr. CLAY]. If he were present, I should vote "yea."

Mr. MARTIN (when his name was called). In the absence of the junior Senator from Nevada [Mr. NIXON], with whom I am paired, I withhold my vote.

Mr. WARREN (when his name was called). I announce my pair with the senior Senator from Mississippi [Mr. MONEY].

The roll call having been concluded, the result was announced—yeas 46, nays 24, as follows:

YEAS—46.

Aldrich	Carter	Gallinger	Penrose
Beveridge	Clark, Wyo.	Gamble	Perkins
Bradley	Crane	Hale	Piles
Brandegee	Crawford	Heyburn	Scott
Briggs	Depew	Johnson, N. Dak.	Smith, Mich.
Bristow	Dick	Jones	Smoot
Brown	Dixon	Kean	Stephenson
Bulkeley	Dolliver	Lorimer	Sutherland
Burkett	du Pont	McCumber	Warner
Burnham	Elkins	Nelson	Wetmore
Burrows	Flint	Oliver	
Burton	Frye	Page	

NAYS—24.

Bacon	Cummins	Gore	Overman
Bailey	Curtis	Hughes	Shively
Bankhead	Daniel	Johnston, Ala.	Simmons
Chamberlain	Fletcher	La Follette	Smith, S. C.
Clapp	Foster	McLaurin	Stone
Culberson	Frazier	Newlands	Taylor

NOT VOTING—22.

Borah	Dillingham	Nixon	Smith, Md.
Bourne	Guggenheim	Owen	Taliaferro
Clarke, Ark.	Lodge	Paynter	Tillman
Clay	McEnery	Rayner	Warren
Cullom	Martin	Richardson	
Davis	Money	Root	

So Mr. McLAURIN's amendment was laid on the table.

Mr. BULKELEY. I should like to offer an amendment. On page 374, line 15, it reads, "the sums required by law to be carried to premium reserve fund."

There is nothing so far as my experience goes known as "premium reserve fund" in connection with insurance companies.

Mr. ALDRICH. The Senator explained his amendment to me, and I accept it.

The VICE-PRESIDENT. The Secretary will state the amendment.

The SECRETARY. Strike out the word "premium," at the end of line 15, on page 374, and strike out the word "fund," in line 16, and insert the word "funds."

The amendment to the amendment was agreed to.

Mr. BULKELEY. On page 377, line 9, I move to strike out the word "premium," before "reserve," and in the same line to add the letter "s" to the word "fund."

Mr. ALDRICH. Let the amendment to the amendment be agreed to.

The amendment to the amendment was agreed to.

Mr. BULKELEY. Another amendment should be made, on page 378, line 11. It reads:

For taxes imposed under the authority of the United States or any State or Territory thereof.

After the word "State," I move to insert the word "municipality."

Mr. ALDRICH. There is no objection to that.

The amendment to the amendment was agreed to.

Mr. BULKELEY. I suggest to the Senator from Rhode Island that the word "premium" be stricken out, on line 14, page 373, and, in the same line, to strike out "fund" and insert "funds," so that it will read the same as the other paragraph, "reserve funds."

Mr. ALDRICH. I have no objection to that.

The amendment to the amendment was agreed to.

Mr. BULKELEY. With a view of facilitating the passage of the bill, I will offer an amendment, and, without remarking on it, allow it to be voted on.

The VICE-PRESIDENT. The Senator from Connecticut submits an amendment, which will be read.

Mr. BULKELEY. I think it should be commented on, but it is the amendment which I suggested for publication in the RECORD a few days ago. It was then to come in after line 9. The bill has been changed, so that it will be section 6, page 371, line 15. After the word "company," I move to insert the following:

Except mutual insurance companies or corporations, and companies or corporations transacting business upon the mutual plan wholly for the benefit of its mutual policy holders.

I will not spend any time in discussing it.

The VICE-PRESIDENT. The amendment will be stated.

The SECRETARY. On page 371, after the word "company" in line 15, insert:

Except mutual insurance companies or corporations, and companies or corporations transacting business upon the mutual plan wholly for the benefit of its mutual policy holders.

Mr. ALDRICH. I move to lay the amendment on the table

Mr. BULKELEY. On that I ask for the yeas and nays.

The yeas and nays were not ordered.

The motion to lay on the table was agreed to.

Mr. LA FOLLETTE. On page 372, at line 16, before the word "organization," I move to insert "agricultural or horticultural."

Mr. ALDRICH. I accept that amendment.

The amendment to the amendment was agreed to.

Mr. GALLINGER. There should be a comma after "labor."

Mr. LA FOLLETTE. I ask also to insert a comma after the word "labor," in line 15.

The VICE-PRESIDENT. Without objection, that will be done.

Mr. DANIEL. On page 371, beginning with section 6, I move to strike out, from line 13 down to and including the word "imposed," before the word "Provided," in line 14, on page 372, and to insert what I send to the desk.

The VICE-PRESIDENT. The amendment will be read.

The SECRETARY. As a substitute offered to section 6, on page 371, line 13, to line 14 on page 372, it is proposed to insert:

SEC. 6. That every corporation, joint stock company, or association organized for the profit of its members and having a capital stock represented by shares above $300,000, shall be subject to pay annually a special excise tax with respect to carrying on and doing business by such joint stock company or association, equivalent to one-fourth of 1 per cent, upon its entire gross proceeds over and above $20,000 received by it from all sources during such year.

Mr. DANIEL. Mr. President, if this was a class of competitive examination in order to show who was the most tired man of this debate, I would expect to win the first place in the competition. The Senator from Rhode Island is a great actor, a great wizzard, and he is also a great ventriloquist. With an activity, eagerness, earnestness, and freshness which are unsurpassed in this body, he comes upon the stage and says we must adjourn right now; that he is tired out. That is only one phase of his diverse genius. He is very different from the rest of us plain and prolix people. He does by magic what we have to try to do by toil. He waves his wand and utters his incantations, and so-called "insurgents" march with the vigor and measured tread of Roman soldiers following Cæsar to victory. More than that, Mr. President, we hear a murmur yonder; we hear a murmur here and a murmur there. Presently the Senator rises and flings his voice around the Senate and the next moment everybody is talking just like him, and Senators think that right which before they had murmured was wrong.

Mr. President, I do not wish the Senate to be misled. There is no man in this body who has enjoyed himself as much or so luxuriously as the Senator from Rhode Island, and he is so happy in carrying everything before him all the time that you could not please him better than if you were to stay here during August and September and allow him to spend his vacation in this joyous, conquering way. So I am emboldened, Mr. President to offer an amendment, which I hope may engage his attention and in the end may get his vote. The Senator is not rigid and unbending about the corporation amendment. He sometimes changes, like the rest of us plain mortals. In the beginning of this debate he said: "No corporation amendment;" and indicated his stern and opposed mind to that effect. Now he says "corporation amendments." But I want to suggest to the Senator's contemplation a simpler corporation amendment. It is one that does not cut such large slices out of the subject-matter, but it does take more small slices out of nearly the

whole subject-matter and does not turn over, to begin with, so much of it to anterior claimants. Besides this, it will get the revenue without oppression or incumbrance to the smaller corporations. It is the amendment which I have offered, and upon which I wish to briefly comment. In the first place, it taxes no corporation unless it has $300,000 capital. It is not necessary to tax all corporations; and this Government in taxing corporations may have that manner of regard for the small people which the poor law and the homestead law of a State has for them; the various exemptions which run through all our state laws have in dealing with people who are near or at the bottom, or engaged in charitable, fraternal, and educational work. Three hundred thousand dollars for a trading or manufacturing corporation is no large amount in these times. We do not think that a man has become dignified unless he is to be counted in the millions, and it is out of the millions that we wish to elicit a contribution which, as a general rule, is paid larger in proportion by poor people than by rich ones.

You consider the prices of the ordinary necessities of life, and you will find that the poor people pay more for what they consume than do any other people. It is because they have to buy "by the small," on account of their small capital, while the great can have large transactions and in wholesale ways get the lowest prices.

Furthermore, Mr. President, we could by this amendment relieve the pressure and trouble about all the small exemptions; we could also relieve the confusion and friction about the partnerships and the corporations by taxing nobody unless he is of importance enough to exceed $300,000 in stock in the corporation which is represented. The ordinary partnership does not rise to such an amount of capital.

In addition to that, to make the measure good and full, we would throw in $20,000, just as you throw in $5,000 in the pending bill.

Then, Mr. President, I would tax the gross receipts of all those corporations whose capital is above the exempted ones. Two per cent of net revenue, as provided in the pending measure, is a considerable percentage in taxation. One-fourth of 1 per cent is an amount which will break nobody and oppress nobody in the selected classes of corporate taxpayers to the United States, and will put no heavy or unbearable burden upon anyone whatsoever.

This proposition is founded on precedents. We used to tax corporations by gross receipts. It is a hoary example of this very Government. In that case you reach the property that is represented by the shares, by the bonds, and by everything that constitutes the corporation.

Mr. CARTER. Mr. President——

The VICE-PRESIDENT. Does the Senator from Virginia yield to the Senator from Montana?

Mr. DANIEL. I yield.

Mr. CARTER. I have in mind one corporation, with a net income of $250,000 per year, that only has $2,500 capital stock. Would the Senator's amendment reach that corporation?

Mr. DANIEL. I think it would not, according to its terms.

Mr. CARTER. It would be exempt, for it has only $2,500 of capital stock, though it has a net income of $250,000.

Mr. DANIEL. This is not an income tax.

Mr. CARTER. I understand that. The company to which I refer probably owns property to the value of $5,000,000.

Mr. DANIEL. Perhaps with a little more consideration and a little more deliberate chance, I might encourage the volunteer from Montana, and add something else to this bill that will embrace his corporation in it.

But it must be remembered that the proposition is that of a tax for conducting business, and the case referred to by the able Senator from Montana is not one usually, or within my knowledge, ever embraced in this kind of a proposition. In speaking of any general scheme—I care not what it is—there are always a good many things left out which, on reflection, one might like in some way to put in, and it may be some things put in that, on reflection, one would like to leave out. The only thing you can do is to draw certain general lines which are for the best, all things, including precedents, considered.

In regard to partnerships, there are a great many small partnerships in this country which are without the corporate form, but which are engaged in the same business that corporations similar in many respects are doing. This would eliminate that jar and jostle between them, and put them all upon the same footing up to the mark of $300,000. When they exceed that they would enter into a different class and come under different views.

There are no less than five differences of a striking character between partnerships and corporations, which may be doing the same business. In the first place, partnerships are natural persons. They are just plain folk, human beings, citizens, or perhaps aliens, but people. They have a local habitation and they have their own proper names. A corporation, on the other hand, is purely a fiction of the law; an artificial creation; a figment only out of the brain of man. That is one substantial difference.

The next substantial difference between the two is that the partner, the private citizen, always flies his own flag, and he generally goes under his own name, unless it be that of some antecessor who has preceded him in that business. There is an identity about it; there is a place about it; there is an openness, a candor, and a guilelessness about it, which makes a distinction between him and the corporation.

Who knows who a corporation is? It is often an obscure entity created by law, named by law, and existing by law, in the mold that the law has run the metal that constitutes it. It is a figment of law; it is not a reality in the sense that an individual or a partnership is.

In the third place, there is a difference in their liability. You may not even know who the corporation's constituent parts are, but you know who the partnership constituents are. In respect to liability, if a man enters a partnership, a man with a very small share of stock may bankrupt the concern, because he represents the whole partnership, and may use the partnership and bind and burden all the partners. In the next place, he may himself be bankrupted by another member of the concern. In the next place, he may have a very small interest, and may yet be liable for millions upon millions of dollars. His whole relationship of business is constituted and built up upon a different plan and scheme from that of a corporation.

It is true that in many of the States, as was suggested by the Senator from Georgia [Mr. BACON], they limit liability, but the ordinary common-law partnership, the partnership as it has been generally known in business, is of the character which I have described.

There is another most important difference between a partnership and a corporation. A corporation is created to have perpetuity and a common seal. Immortality is put into it, so far as the law can put immortality into anything. The death of a shareholder does not interrupt the current of its stream; the death of many shareholders does not alter its concerns. It flows on like a river that has no waves and no ripples. On the other hand, if a partner dies the firm is dissolved. All ends with one, and it goes out of existence.

In the next place, Mr. President, there is a very important difference as to location and residence of a partnership and of a corporation. Where does a corporation reside? It may be as migratory as any bird of the air. It may be organized in Utah or in Kansas or in that great factory of corporations, New Jersey, and it may be doing business in Washington; it may be doing business in Kamschatka; it may be roaming over the world to find its place of occupation; but a partnership is fixed; it has a fixed residence according to its own place of business and according to the status of its members.

The existence of these differences, and the franchise created by law for the corporate benefit, has led to the classification of corporations for subjection to the excise tax levied upon its exercise of the privileges conferred.

There are many things—settled personal views—about this excise tax which we ought to remember, and I propose to state, just as I have stated the difference between corporations and partnerships, what are some of the marked and settled opinions which have had juridical exposition and indorsement as to the power to tax corporations. I will state some of them. I think it will be found settled in the judicial reports of this country, and so well settled that no lawyer familiar with the decisions could hope to disturb the decisions, as follows:

(1) That corporate franchise is a distinct subject of taxation, and not as property, but as the exercise of a privilege.

(2) That it may be taxed by a State or country which creates it.

(3) It may be taxed by a State or Territory in which it is exercised, although created by a foreign country.

(4) It may be taxed by the United States, whether created by the United States or a foreign country or by a State, Territory, or district of the United States.

(5) The franchise of the corporation may also be taxed by a State, although created by the United States, unless created as a part of the governmental machinery of the United States.

The same or rather the like limitation applies upon corporations created by the States. You may tax any private corporation of a State, but a corporation of the State, that is chartered by the State to perform some function of its govern-

ment, partakes of a governmental nature, just as one so formed by the United States; and as the one can not be taxed by the Federal Government, so the other can not be taxed by the State.

It is also true—and this I put as a sixth proposition—that a United States corporation may be taxed by a State although created as a part of the governmental machinery of the United States, provided that the consent of the United States is given thereto. As an illustration of that, I cite the national banks.

Mr. President, an impression has got out in some portions of the Chamber that it is taxing property twice if a corporation holds stock in another corporation and if both corporations are taxed with respect to the holding of such property. This is a complete confusion of thoughts; it is the melting of two ideas into one, losing sight of the identical relation which each has toward business and toward the public.

In the case of a corporation whose bonds and stocks are held by another their relation is fixed by the person or corporation to whom they belong. The bonds of a corporation do not belong to itself. They belong to and are the property of some other person or corporation. If a holding corporation owns bonds or stocks it does not by this proportion pay any tax on them at all as bonds or stocks. They are simply used as a yardstick by which the measure of the excise, which is in the nature of a license tax, shall fix the number of dollars for that license or that privilege. That is all. It is a very simple proposition and it is incapable of confusion unless a man is negligent in observation or has a motive to confuse and wants to tangle things up in order to obfuscate other people.

Now, Mr. President, I am going to read a few decisions on this question. I will refer again to a Connecticut case, which has been a leading one. That was the case of the Society for Savings *v.* Coite. It went to the Supreme Court, and is reported in Sixth Wallace, page 594.

There was a striking instance of the power of a sovereign to take an excise tax out of a state corporation and to measure the tax by the United States bonds which were exempt from taxation which that corporation held. The legislature of Connecticut in this case had enacted a law that the savings banks should make an annual return to the comptroller of public accounts of the total amount of deposits. It appears that some $500,000,000 were invested in the securities of the United States. It was contended in that case before the Supreme Court, just as it is contended here after this long lapse of time, that these securities were exempted from taxation, and that, therefore, the State of Connecticut could not levy this franchise tax on the deposits of the banks, in so far as those deposits had been transformed by law into the form of United States tax-exempted securities. So the question was presented to the Supreme Court of the United States for judicial determination in the sharpest form in which it could arise; and Judge Clifford, a Maine man, eminent in his profession, and of great renown as an able judge, gave the opinion. Here is what he says:

> Power to tax is granted for the benefit of all, and none have any right to complain if the power is fairly exercised and the proceeds are properly applied to discharge the obligations for which the taxes were imposed. Such a power resides in government as a part of itself and need not be reserved when property of any description or the right to use it in any manner is granted to individuals or corporate bodies.
>
> Corporate franchises are legal estates vested in the corporation itself as soon as it is in esse. They are not mere naked powers granted to the corporation, but powers coupled with an interest which vest in the corporation upon the possession of its franchises, and, whatever may be thought of the corporators, it can not be denied that the corporation itself has a legal interest in such franchises.
>
> Nothing can be more certain in legal decision than that the privileges and franchises of a private corporation and all trades and avocations by which the citizens acquire a livelihood may be taxed by a State for the support of the state government. Authority to that effect resides in the State independent of the Federal Government, and is wholly unaffected by the fact that the corporation or individual has or has not made investment in federal securities.
>
> Private corporations engaged in their own business and pursuing their own interests according to their own will are as much subject to the taxing power of the State as individuals, and it can not make any difference whether the tax is imposed upon their property, unless exempted by some paramount law or the franchise of the corporation, as both are alike under the protection and within the control of the sovereign power.

I should also like to cite, although I do not care to read it at length—I wish to abbreviate as much as I can—the case of Coite *v.* Society for Savings, reported in Thirty-second Connecticut, page 173. These are doubtless cases with which our distinguished friend from Connecticut is thoroughly familiar. They come from his State, and they were among the forerunning cases that laid down the fundamentals of the law on this subject.

Another case that I will cite is from Massachusetts—the case of Provident Institution *v.* Massachusetts (6 Wall., p. 611). In that case the Coite cases were approved by the supreme judicial court of Massachusetts. In this particular case it appeared that the institutions for savings which were before the court were required by statute to pay to the treasurer of the Commonwealth of Massachusetts "a tax on account of its depositors of one-half of 1 per cent per annum on the amount of its deposits." With this statute, to which I have referred, in existence, the Provident Institution for Savings, a corporation without property except its deposits and the property in which its deposits were invested, and empowered under the general law of the State to receive money on deposit for the use and benefit of the depositors and to invest its securities in the securities of the United States, had as its average amount of its deposits for the six months preceding the 1st day of May, 1865, $8,047,652.10. Of that amount, $1,327,000 was invested in the public funds of the United States, exempt from taxation by any State. It paid all the taxes assessed against it except on that part which was made up of exempted United States securities, namely, $1,327,000. The Commonwealth of Massachusetts sued for the tax to collect the balance claimed to be due on the exempted United States bonds. The supreme judicial court of the State, considering that the tax was one on the franchise and not on property, adjudged the tax lawful and gave judgment for the Commonwealth of Massachusetts.

This case went up to the Supreme Court of the United States, in Sixth Wallace, as I have already stated; and Judge Clifford, in an illuminating opinion, restated the principles I have already announced.

In the Bank Tax case (2 Wall., 200), 1864, a New York tax came under scrutiny with reference to such principles as I have already announced. Judge Clifford there again gave the opinion and reiterated the views I have heretofore set forth.

Mr. President, I could multiply these cases indefinitely, but the case of Spreckels (192 U. S.) has shown that the Supreme Court is to-day treading in the middle of the road, just as it has done for over forty years. There is no novelty and no dubiety about this, and there is no sort of strangeness in these decisions. Let me put a case to the Senators who have questioned the principles here involved.

Suppose a man comes to town and gets out a license to buy and sell real estate. It is a vocation in many States, and in many of them a very large and far-ranging business. He may deal in nothing but real estate. The State may tax him with respect to all the estate that he deals in, or makes it the base of the measure of the percentage that it levies on his vocation, and so forth. The State or the Federal Government may fix its excise tax in any rational way that it thinks proper; and the fact that real estate is at the bottom of it, provided that real estate is held only as part of a business vocation, has nothing whatsoever to do with the matter any more than the exempted bonds of the United States had to do with the various questions of exemption, and trying to get out of and from under the tax which I have stated.

The VICE-PRESIDENT. The Senator from Virginia will permit an interruption. The hour of 7 o'clock having arrived, the Senate stands adjourned until to-morrow, Thursday, July 8, 1909, at 10 o'clock a. m.

SENATE.

THURSDAY, *July 8, 1909.*

The Senate met at 10 o'clock a. m.

Prayer by the Chaplain, Rev. Ulysses G. B. Pierce, D. D.

The Journal of yesterday's proceedings was read and approved.

PETITIONS AND MEMORIALS.

Mr. JOHNSTON of Alabama. I present a petition of Winona Council, No. 3, Junior Order of United American Mechanics, of Decatur, Ala., stating that our immigration laws are inadequate for the protection of the country from undesirable immigrants. I ask that the petition be printed in the RECORD and referred to the Committee on Immigration.

There being no objection, the petition was referred to the Committee on Immigration and ordered to be printed in the RECORD, as follows:

> HALL OF WINONA COUNCIL, No 3,
> *Decatur, Ala., June 25, 1909.*
>
> *To the honorable the Senate and the House of Representatives of the United States of America in Congress assembled:*
>
> Your memorialist, Winona Council, No. 3, Junior Order United American Mechanics, of Decatur, Ala., would respectfully submit to your honorable body that our immigration laws are inadequate for the protection of our country from the undesirable immigration from southern Europe and kindred nations and should be so amended to throw a greater restriction around our ports of entry so as to prohibit the landing upon our shores of all undesirable persons who come here to labor in competition with our American workmen.
>
> Our present immigration laws are unsatisfactory. We should absolutely prohibit the coming here not only persons who are known to be believers in anarchistic principles or members of anarchist societies, but also all persons who are of a low tendency or unsavory reputation. This means that we should require a more thorough system of inspec-